82-108

Office - Supreme Court, U.S.
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JUNE
JUL 19 1982
ALEXANDER L. STEVAS,
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

DONALD E. TYLER,

Petitioner

v.

HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, WARREN & SOMMER, INC., INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., CARL McLAUTHLIN, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., WILLIAM BUCKMAN, THOMAS H. MITCHELL, PETER PRYOR, CHARLOTTE PELLETIER, JEAN KOEHLY, BERNADENE POST, GWEN STIEBER, GRANT MILLER, M.D., RICHARD EVANS, TERRY FIELDS, JOHN MOTT, ST. PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the District Court abuse discretion, error, and exceed jurisdiction in ordering the plaintiff-petitioner to submit a "cost" bond in the amount of $48,000.00 for purposes of defendants, and in ordering dismissal of this case, and with prejudice, because the petitioner refused to submit such a bond ?

2. Did the District Court error, abuse discretion, and exceed jurisdiction by entertaining defendants' motions to assess their attorney fees against the plaintiff-petitioner maintaining that threat against the petitioner for lawful use of the federal court and in denying petitioner's motion to strike such motions?

3. Did the District Court error, abuse discretion, and exceed jurisdiction by imposing impossible conditions for the

plaintiff-petitioner to maintain this lawsuit including by ordering:

(a) the petitioner to draft a complaint not based upon and without the grievances of his complaint filed,

(b) dismissal of selected allegations of the complaint,

(c) striking of parts and all of the complaint,

(d) a "more definite statement" which in reality is a bill of particulars including facts in sole knowledge of defendants,

(e) a complaint with separate counts and claims as to each defendant, and particularly when the claim is for joint and several liability and for conspiracy by these 24 defendants and many other persons,

(f) denying motions of the petitioner to compel discovery, which included any and all discovery from most defendants,

(g) stay of discovery,

(h) requiring the petitioner, appearing pro se from Oregon, to confer with counsel of defendants prior to submitting motions to compel discovery, and

(i) imposing the impossible condition of submission of a complaint of the grievances of the present complaint which would be subjectively intelligible to the District Court without objective standards?

4. Did the District Court error, abuse discretion, and exceed jurisdiction in denying petitioner's motion to stay proceedings pending time for the petitioner to seek review by this Supreme Court by writ of certiorari to the Court of Appeals for the Tenth Circuit of its refusal to issue writ of mandamus or prohibition to grant relief requested herein from oppressive orders

which resulted in dismissal and the unrecoverable damage therefrom?

5. Have the presiding Judge of the district court and Judges of the U.S. Court of Appeals for the Tenth Circuit illegally and unlawfully closed the federal courts to this petitioner in violation of his common law rights, in violation of the purpose of the Declaration of Independence, in violation of his rights guaranteed by the preamble, 1st, 5th, and 7th Amendments and Art. III, sec. 2, Art. IV, sec. 2 of the U.S. Constitution, and in violation of the purposes of 13 U.S.C. § 241 and 42 U.S.C. §§ 1983, 1985, and 1986?

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DONALD E. TYLER

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HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, WARREN & SOMMER, INC., INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., CARL McLAUTHLIN, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., WILLIAM BUCKMAN, THOMAS H. MITCHELL, PETER PRYOR, CHARLOTTE PELLETIER, JEAN KOEHLY, BERNADENE POST, GWEN STIEBER, GRANT MILLER, M.D., RICHARD EVANS, TERRY FIELDS, JOHN MOTT, ST.

PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Donald E. Tyler, petitioner, prays that a writ of certiorari issue to review the judgment of the U.S. District Court for the District of Colorado entered in the above entitled case on April 28, 1982, which is in the U.S. Court of Appeals for the Tenth Circuit, appeal pending.

OPINIONS BELOW

Petitioner's motion to alter or amend judgment is in Appendix A, infra, pages A-1 through A-6. Final judgment

denying petitioner's motion to alter or amend judgment is in Appendix A, infra, pages A-7 through A-9. Reporter's transcript of hearing in which order of dismissal issued is in Appendix A, pages A-10 through A-44. Petitioner's waiver of hearing, mailed certified with return acknowledgement of receipt received by the court April 19, 1982, but filed April 26, 1982, referred to in aforementioned transcript is in Appendix A, pages A-45 through A-49. Petitioner's response to motions to enter judgment is in Appendix A, pages A-50 through A-53. Petitioner's motion to strike motion for attorney fees is in pages A-54 through A-57. Reporter's transcript of proceedings February 17, 1982, in which cost bond and other impossible conditions to maintain the action were ordered is in Pages A-58 through A-90. Judgment and order of dismissal entered May 25, 1982, after notice of appeal, are at pages A-188 and A-190.

JURISDICTION

Final judgment was entered April 28, 1982. Notice of Appeal to the U.S. Court of Appeals for the Tenth Circuit was timely filed in the District Court on May 24, 1982, and in the U.S. Court of Appeals on May 25, 1982. (Page A-203) The record was received in that Court on June 8, 1982. (Page A-206) Jurisdiction in the Supreme Court is based upon 28 U.S.C. §§ 1254(1) and 2101(e) and Supreme Court Rule 18. It is submitted that the closure of federal courts to this petitioner and to anyone else in the choosing of judges of a U.S. District Court and with approval of judges of the Court of Appeals is of such imperative public importance as to justify deviation from usual appellate process. Open courts and trial by jury were of such importance as to be demanded of the King of England at Runnymede in 1215 and presented in 1776 in the Declaration of Independence.

Those rights were guaranteed in the Bill of Rights. This Court deviated from normal appeal procedure for a case of similar nature but much less far reaching, Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L.Ed. 1528, 69 S.Ct. 1221 (1948). The closure of the federal courts to the petitioner was done under color of state statutes concerning use of courts of the State of Colorado by non-residents of the state and penalties that could be imposed for abuse of use of state courts. The court ordered the plaintiff-petitioner to post a $48,000 bond for purposes of defendants and threatened award of attorney fees to defendants. He also ordered impossible conditions including restrictions as to the grievances he would allow in the complaint. The issues herein have already been presented to the Tenth Circuit Court of Appeals. It denied petition for writ of mandamus or prohibition

to prevent dismissal of this case based upon the aforementioned abusive orders. Both the District Court and the Court of Appeals denied motions to stay proceedings in this case for time for the petitioner to seek review by writ of certiorari by this Court of that Appeal Court decision. The appeal has obviously been erroneously predecided and will waste time and money. Time is of essence to the petitioner and to other citizens who may similarly be denied use of the courts, and as here, after expending considerable time and money. The petitioner continues to be denied the right to practice medicine and the public is being denied his services as long as this and related cases are in dispute. Further, the case subject of this petition is concerned with a conspiracy which interferes with and prevents justice in essentially every

case in state and federal courts in Colorado alleging medical malpractice.

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

The U.S. Constitution provides in pertinent parts:

Preamble: We the People...in Order to... establish Justice,... and secure the Blessings of Liberty ...

Article III, section 2: The judicial power (of the United States) shall extend to all cases ...arising under this Constitution, the Laws of the United States, ... between Citizens of different States ...

ARTICLE IV, section 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States.

Amendment I: Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized.

Amendment V : No person shall be ... deprived of life, liberty, or property, without due process of law; ...

Amendment VII : In Suits at common law, ... the right of trial by jury shall be preserved, and no fact tried by a jury, shall otherwise be re-examined in any Court of the United States, than according to the rules of common law.

Amendment VIII : Excessive bail shall not be required, no excessive fines imposed, ...

Amendment XIV : ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ...

Title 15 U.S.C. provides in pertinant part:

§ 1. Every contract, combination in the form of trust or otherwise, or conspirac y in restraint of trade or commerce among the several states ...is hereby declared illegal. ...

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any person or persons, to monopolize any part of the trade or commerce among the several States ... shall be deemed guilty of a felony ...

§ 15. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section ... interest on the actual damages for the period beginning on the date of service of such person's pleading ... the court shall consider only--
(1) ...acted intentionally for delay, or... in bad faith;
(2) ...dilatory behavior...
(3)...delaying the litigation or increasing the cost thereof.

Chapter 13 U.S.C.S. § 241 provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder hs free exercise or enjoyment of any right or privilege so secured--
They shall be fined not more than $10,000 or imprisoned not more than ten years, or both;
...

Title 42 U.S.C provides in pertinent parts:

§ 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1985. ...(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property ...; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; (3)... the party so injured or deprived may have an action for the recovery of damages,...

§ 1986. Action for neglect to prevent conspiracy. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (42 U.S.C. § 1985), are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; ...

Colorado Revised Statutes, 1973, provide in pertinent parts:

10-4-109. Non renewal of medical malpractice policies. (1) No insurer shall refuse to renew a policy of medical malpractice insurance unless...advance notice...

12-43.5-102. Establishment of review committee - function. (1) A review committee may be established pursuant to this section to review and evaluate the quality of care being given patients by any physician ... to protect patients against the unauthorized, unqualified, and improper practice of such physician.
(2)...Such a committee may be authorized only by: ... (d) A society or an association of physicians whose membership includes not less than one-third of the medical doctors or doctors of osteopathy licensed...
(3)(a) ... An investigation may relate...or any other matter affecting the quality of care

provided.
(b) (I) If the findings of the investigation indicate substantial lack in the quality of care ...the review committee shall hold a hearing... (II) The physician allegedly offering substandard care shall be notified of such a hearing... (c) After such hearing, the review review committee shall make any recommendations,..to the governing board of the hospital or as provided by written bylaws of the hospital or by federal law or regulation . A copy of such recommendations shall be given to the physician allegedly offering substandard care, and he shall have the right to appeal the decision of the review committee to the governing board or other body to which the recommendations are made. (emphasis added)
(Effective date of paragraphs (2)(d) and (3) (a) is July 1, 1977 , Colo. Sess. L. 1977, p. 667.)

13-16-101. Security for costs. In all actions ...where the plaintiff...is not a resident of this state...before he institutes such suit shall file ...an instrument in writing, of some responsible person being a resident of this state,...whereby such person shall acknowledge himself bound to pay...all costs which may accrue in such action either to the opposite party or to any of the officers of such courts...

13-16-10 . Motion to require cost bond. If such action is commenced without filing such instrument of writing...,or if, in any case, the court is satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it is the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff, on or before the day in such rule named, to give

security for the payment of costs in such suit. If such plaintiff neglects or refuses, on or before the day in such rule named, to file such instrument, the court, on motion, shall dismiss the suit. ...

13-17-101 Attorney fees. (1) Subject ot the provisions of subsections (2) and (3) of this section, in any suit involving money damages in any court of this state, the court shall award, ...in addition to any costs otherwise assessed reasonable attorey fees. (emphasis added) ... (3) The court shall not award attorney fees among the parties unless it finds that the bringing, maintaining, or defense of the action against the party entitled to such award was frivolous or groundless. ...

13-90-107. Who may not testify without consent - records. ... (d) A physician or surgeon duly authorized to practice... shall not be examined without the consent of his patient...,but this paragraph (d) shall not apply to: ... (III) A review of a physician's services by any of the following: ... (D) A peer review committee of a society or association of phsicians... and only if ...said physician has signed a release authorizing such review;...

(Effective date of III (D) is July 1, 1976)

18-4-412. Theft of medical records or medical information - penalty.

(1) Any person who, without proper authorization, knowingly obtains a medical record or medical information with the intent to appropriate the medical record or medical information to his own use or to the use of another, who steals or discloses to an unauthorized person a medical record or medical information, or who without

authority, makes or causes to be made a copy of a medical record or medical information commits theft of a medical record or medical information. ...
(3) Theft of a medical record or medical information is a class 5 felony.

STATEMENT OF CASE

The complaint is printed in Appendix A, pages A-91 through A-187. This case is related to other pending petitions for writ of certiorari in this Court, numbers 81-2007 and 81-2139. With no limit on their methods, in and out of court, there is no reason to expect insurance company defendants to pay their lawful obligations. The State Courts continue even without jurisdiction in the case subject of 81-2007 rather than require the insurance companies to pay judgment on the jury verdict. The defendants admit that, or flaunt power, by not answering the petition. The federal courts of the Tenth Circuit are now also closed to the petitioner unless there is remedy by this Court.

The plaintiff, the petitioner here, is a Mayo Clinic-trained urologist certified by the American Board of Urology. His established medical practice in Colorado was destroyed and he has been unable to work at his chosen profession since 1977 and continuing as a result of the illegal acts committed by the defendants and co-conspirators intentionally for the unlawful purpose of malicious interference with his medical practice. This included unlawful obstruction and interference with lawsuits for damages and designed to restore his ability to practice medicine and outrageous conduct to intentionally cause him emotional distress. The action is complex but the complaint clearly states the common law causes of action. The claims for interference with business and outrageous conduct involve many wrongful acts, several ways in which those acts were wrongful and

unlawful including libel, perjury, subornation of perjury, breaches of fiduciary duties, breaches of contracts, abuses of purposes of committees of the state medical society operating under color of State statutes, deceit, fraud, harassment, intimidation, oppression, malicous abuse of power of uniformed police, and includes unlawful oppression and abuse of witnesses and potential witnesses of the plaintiff, and abuses of persons doing business with the petitioner, violations of the 1st, 4th, 5th, 7th, 9th, and 14th Amendment rights of the plaintiff-petitioner, and violations of Title 15 of the United States Code causing damage to the petitioner. It involves claims under Title 15 and title 42 §§ 1983, 1985 and 1986 of the United States Code and for violation of Chapter 13 § 241, U.S.C.S. See Bivens v. Six Unknown named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L. Ed. 2d 619 (1971)

Action was brought against defendants Marks, Larsen and others in 1975, complaint of which is Exhibit B of the complaint of this case. (Pages A- 146 through A-151). That case arose primarily as a result of Marks, Larsen, and others' scheduling of a disciplinary hearing of the petitioner admitted by them to be without charges . Notice of the hearing was indequate stating it was to be about the petitioner's conduct in the emergency room . (Exhibits C and D of Exhibit B of complaint, pages A- 147 through A- 149).

There was and is no legitimate defense for Marks and Larsen in that case. Documentary evidence and admissions proved they scheduled the hearing without charges, breached medical staff bylaws, gave inadequate and untimely notice of a hearing, and acted against the petitioner illegally depriving him of his right to work on call duty in the emergency room

in 1974 and prevented his reappointment to the Brighton Hospital and appointment to other hospital medical staffs for 1975 and thereafter. The medical society and Hartford joined in after that, contrary to garbling of facts by the Colorado Court of Appeals. (Petition 81-2139).

Marks and Larsen were insured for the foregoing lawsuit for one million dollars each by Hartford. Colorado Medical Society has a vested interest because of a contract, subject to Title 15 U.S.C. action herein, which includes refund of premiums to its insured members that are unused to pay Colorado claims. To gain unlawful help in defending Marks and Larsen, Hartford's claim adjuster, Francis Fry, published to Robert Brittain, M.D., all of its files concerning the petitioner including libelous documents, correspondence among attorneys, Marks, Larsen, Fry and other Hartford personnel, hospital records of

patients of Tyler unlawfully in its possession (codified as a felony by C.R.S. 1973, 18-4-412, supra) supplied to it in breach of contracts between patients, Tyler, and Hospital; and the files included other matter alleged.

Brittain, a member of the Risk Management Committee of the Colorado Medical Society, and in the employ of the medical society, republished the contents of aforementioned documents in committee meetings in 1976 at which non-physicians who were not members of the committee were present. Defendant Pryor also republished certain libelous documents to members of the committee for conspiratorial purposes as alleged. The committee had no authority to act under C.R.S. 1973, 12-43.5-102, supra, if at all, before the effective date of July 1, 1977, of amendment of that statute, in spite of finding of such without argument by the Colorado Court of Appeals. (petition for writ of cert. 81-2139)Colo. Sess. L., 1977, p. 667.

The pending cases instituted by the petitioner as plaintiff did not involve quality of medical care, admitted by defendants. That was the only possible jurisdiction of the committee by any rule or color of statute, in effect or not, for the committee to examine medical records of patients cared for by the petitioner. Defendant members of the committee have essentially admitted in depositions in related cases that the primary function of the committee was to aid Hartford in defending lawsuits against physicians insured in the Hartford-Medical Society program. Subject to Title 15, U.S.C., the combination to interfere with justice by damage to the petitioner in his profession for suing physicians insured in the program and the oppression of any physicians who might testify adversely to such insured physicians in this and other lawsuits is

complained of.

As a proximate result of the foregoing, and pursuant to conspiracy as alleged and to cause the petitioner emotional distress, defendants wrote the petitioner a series of abusive, threatening, intimidating, oppressive deceitful letters appended as exhibits to the complaint. They in effect demanded that the petitioner grant them permission to examine all hospital medical records of his patients. The purported deceitful, fraudulent reason for the demand, on its face not in the jurisdiction of the committee, was to determine whether records of patients seen by the petitioner three years previously in 1974, in Brighton Community Hospital, and particularly in the emergency room, were sufficient for defensive legal purposes in the hypothetical event the petitioner were sued by any such persons. Defendant committee members

have admitted that they had no reason to believe such suits would occur, and that they understood the statute of limitations for such suits was two years. When the letters were written in 1977, the committee knew the petitioner was not practicing in any emergency room. Emergency room practice was unrelated to his insurance in 1977 and for 1978. The interest of the committee members was deceitfully connected with the lawsuit against Marks and Larsen which they had discussed in meetings. The inference is clear that the committee members and employees and agents of Hartford acted against the petitioner for various purposes and motives including: (1) they wanted to search unreasonably in a "fishing expedition" for something they hoped might discredit the petitioner in the trial against Marks and Larsen (violating the 4th Amendment); (2) they intentionally acted to

cause the petitioner severe emotional distress; (3) they purposely acted to retaliate against the petitioner for bringing suit against physicians insured by Hartford in the Medical Society program, and (4) they purposely acted to force the petitioner to quit practicing medicine and to leave Colorado.

The letters did not request production of medical records, as claimed by the Colorado Court of Appeals in garbling of facts.(81-2139) If they could coerce the petitioner to grant permission, the defendants obviously planned to obtain the records themselves. They cited C.R.S. 1973, 13-90-107, as amended effective July 1, 1976, that they could examine persons' medical records without their permission. Colo.Sess. Laws, 1976, p. 526. Patients seen by petitioner in 1974 had no reason to believe their contracts for privacy would be violated. If the statute is given retroactive

effect, it is submitted that it violates Article I, section 10 of the U.S. Constitution. The plaintiff was given no valid medical care reason for allowing the committee to examine records. The defendants were attempting to coerce the petitioner to violate the confidences of his patients to satisfy the malicious illegal motives of the defendants. Hartford then imposed the unconcionable condition precedent to any renewal of the petitioner's insurance permission to Hartford for it to examine all medical records of patients cared for by the petitioner in breach of professional ethics, in breach of contracts with patients, in invasions of privacy, and in violation of principles codified as a felony in C.R.S. 1973, 18-4-412, supra. (pages A-163 through 165).

The petitioner did not grant the requested permission. The defendant

committee members then acted without notice of hearing, without charges, and without hearing and determined that the petitioner did not "cooperate," which term they refused to elaborate upon in depositions in a related case. On that basis the committee recommended non-renewal of petitioner's professional liability insurance for 1978. That was clearly without jurisdiction and outside the authority of C.R.S. 1973, 12-43.5-102, supra.

The case also involves other acts as alleged. Damages proximately resulted as alleged.

Discovery was ordered stayed on January 11, 1982, after the plaintiff had attempted to obtain order to compel defendants to comply with discovery requests. On February 17, 1982, the Court ordered (Pages A-58 through A-90):

(1) petitioner to post a bond of $48,000,

(2) dismissal of certain allegations of complaint,

(3) more definite statement,

(4) striking parts and then all of complaint,

(5) separate counts and claims as to each of the 24 defendants, and

(6) denial of patitioner's motions to compel discovery.

The petitioner sought relief from the Court of Appeals for the Tenth Circuit by petition for writ of mandamus and/or prohibition. It was filed March 11, 1982, and denied on March 18, 1982 by the Honorable Robert H. McWilliams and the Honorable William E. Doyle. Motion to the District Court to stay proceedings pending petition to this Court for writ of certiorari to that case was filed March 24, 1982. Motion to order stay of proceedings pending petition to this Court was denied by the Appeals Court on April 20, 1982. On April 21, 1982, the case was dismissed.

Federal issues presented herein have been presented at every stage of proceedings including in the complaint, motions for discovery, in response to motions by defendants, and in motion to amend or alter judgment. The district court recognized the existence of federal issues on February 17, 1982, in denying defendants' motions to stay proceedings pending cases in state courts. (A-67). No other federal issues were ruled upon by the Court.

REASONS FOR GRANTING THE WRIT

A. The Order of Cost Bond and Dismissal of this Case because of noncompliance was a gross abuse of discretion, in excess of jurisdiction, and a gross violation of fundamental Constitutional and Natural Common Law Rights.

It is submitted that citizens of this nation

subscribed to a Declaration of Independence complaining of deprivation of benefits of trial by jury and tenure of judges subject only to the will of the sovereign. It is further submitted that prior to adopting the U.S. Constitution the people required that the common law right to trial by jury for damages be guaranteed in writing in the Bill of Rights. The right of trial by jury for redress of injuries was secured in the Magna Carta in 1215 as a natural common law right of Englishmen. It guaranteed that such use of the courts was to be "freely without sale, fully without any denial, and speedily without delay." BLACKSTONE: Commentaries on the Laws of England, Vol. I, p. 141. This Supreme Court has held that the right to trial for damages is a property not subject to deprivation by any legislature. Angle v.

Chicago, St. Paul, Minneaplis & Omaha Ry. Co., 151 U.S. 1, 38 L.Ed. 55 (1893). Being a property, it is subject to the 5th Amendment as well as to the 7th Amendment.

Right to trial could not be denied by kings; and millions have died believing that was a principle for which they were fighting. But three appointed judges with lifetime tenure have denied that right to the petitioner. Those judges deem it within judicial discretion to require a bond of any arbitrary prohibitive amount of any party as a condition to use the courts as a forum. That is an arbitrary power to close the courts to any party at any time in the choosing of the judge. It is submitted that this is in gross violation of the Constitution, 13 U.S.C. § 241, 42 U.S.C. §§ 1983, 1985, and 1986, supra. Such manifest bias and prejudice can only be due to the petitioner's minority religious affiliation which defendant Mott injected in a related trial.

The Court acted under color of C.R.S. 1973, 13-16-102, supra. The language of the statute and its purpose is clearly related to the interest of Colorado in securing costs in its courts incurred by non-residents of the state. It relates to usual costs allowed such as docket fees and jury fees. Costs incurred in Federal Courts are not within the jurisdiction or interest of the Colorado Legislature. The statute is in obvious violation of Art. IV, sec. 2 of the U.S. Constitution but that need not be addressed in this decision. The statute plainly does not apply to actions in federal courts. Further, the statute does not include bond for discovery costs as the Court here demands, and for fees of defendants' attorneys in any instance. The power to legislate costs, fees, and security of such in federal courts for federal claim actions and for diversity actions is in Congress. Art. III, sec 2, U.S. Constit.

The instant case involves common law claims which encompass claims under federal statutes and involves Citizens of different states. Had Congress intended cost bond to be required of a plaintiff for federal actions, and/or diversity actions in federal courts it would have so legislated.

The order of the District Court does not follow a prior decision of the same court which held that the state statutes relied upon here do not apply to actions in federal courts, National Distillers Prods. Corp. v. Hindech, 10 FRD 229 (D.Colo., 1950).

Requirement of a bond of the plaintiff for purposes of defendants in the amount of $48,000 is inconsistent with the rules of procedure, in conflict with the intent of Congress, and is substantive and not a matter of procedure. Rule 1 provides for inexpensive determination

of actions. The rules further provide for expected predictable fees charged uniformily to all litigants regardless of state of residence. The requirement of a prohibitive bond in this instant case is in conflict with the intent of Congress to encourage private antitrust actions by awarding triple damages and attorney fees to the winning plaintiff. No allowance is made for discovery and attorney fees of defendants. This Supreme Court determined that requirement of a bond is substantive and not procedural. Cohen v. Beneficial Industrial Loan Corp., supra. In that case it was held that the State could close its courts conditioned upon a reasonable bond for statutory derivative stockholder actions. That statute apparently related to costs incurred by the corporation defending against its own stockholders. The State statute involved here concerns costs of

use of state courts, not expenses of persons and corporations defending common law claims and federal claims in federal courts.

No Cause Shown or Found

In the absence of extra-ordinary circumstances motions for cost bonds have been denied. Newell v. O. A. Newton & Son Co., 95 F. Supp. 355 (Dela., 1950). The defendants made no showing and the Court made no finding that this petitioner presented such extra-ordinary circumstances. The Court found (1) the plaintiff-petitioner is a non-resident of Colorado, (2) there are "threads" in the pleadings that the petitioner is unemployed, (3) the suit is complex, (4) the numerous filings, (5) the exigent circumstances with discovery, and (6) the demand is "excessive." (pages A-88 and A-89). The petitioner is apparently penalized because of

mob of defendants, the grossness of their conduct, the large monetary damage inflicted, the many people they have damaged, and their refusals to comply with requests for discovery. Even if the Court found the petitioner unemployed, which it did not, that is not a finding that the petitioner is unable or unwilling to pay for lawful debts when they become due. The petitioner submits that his unemployment and his non-residency are due to the unlawful acts of the defendants, subject of this action. By the Court's reasoning, any powerful oppressive defendant that can maliciously cause a person to become unemployed and make his residence in Colorado undesirable can thereby and thereafter cause the federal courts to be closed to the displaced person.

There is no apparent relationship between the amount demanded and need for a cost bond

in the interest of the court. It is obviously related to the need and desire of the defendants to prevent the access to the courts of the plaintiff, and particularly to prevent a trial by jury. It is submitted that the finding that the demand is "excessive" is in excess of the jurisdiction of the Court, indicates a bias and a pre-judgment, and invades the province of the jury. The order of $48,000 bond is a clear threat of such an award to defendants under some color of authority. The order of $48,000 bond under any color is illogical and unreasonable by simple analysis. If the case were groundless, it would have been summarily dismissed without significant expenses being involved. The request of $96,000 bond by defendants was an obvious admission that their preliminary motions to dismiss, strike, make more definite statements, and refusals to

comply with discovery were frivolous and designed to delay, harass, and cause unnecessary expense. It was an admission that considerable litigation was expected. It clearly indicated the desperation of the super rich defendants for their lack of defense and their need to close the courts to the petitioner. A child could diagnose the situation. The Court denied motions to dismiss for failure to state a claim for which relief can be granted, thereby recognizing that there is no legitimate basis for considering penalizing the plaintiff-petitioner. The verified complaint establishes a prima facie case.

Bond Amount Unreasonable and Arbitrary

No cause was shown and no cause was found for the amount of cost bond ordered. The defendants did not itemize costs for which they sought a bond in the amount of $96,000.00. The Court did not itemize

the basis for the $48,000 bond ordered. It is clear that the amount was determined in an unreasonable, arbitrary manner to be used in any manner to the pleasing of the Court.

Bond for Discovery and Attorney Fees Error

The amount of cost bond ordered, and the reasons, in association with motions to award defendants attorney fees, indicates that it was intended to include anticipated award of attorney fees to defendants and their expenses of discovery. The Colorado statute relied upon, C.R.S. 13-16-102, supra, provides only for usual court costs, not discovery expense and attorneys fees. 20 C.J.S. pp. 455-460; C.R.S. 1973, 13-17-101, supra. Even where a district court had enacted a local rule allowing cost bond, it only applied to costs allowed under Rule 54(d), and did not authorize allowance of attorney fees and expenses to a

successful defendant in an antitrust case. Adams Dairy Co. v. National Dairy Products Corp., 293 F.Supp. 1168 (Mo., 1968). The petitioner submits that there is no authority to award defendants attorney fees or expenses of discovery in any case in federal courts other than pursuant to common law suit for malicious prosecution. 1st, 5th, and 7th Amendments, U.S. Constit. Other courts have held that attorney fees are not allowed in defense of any federal antitrust case even if baseless. Byram Concretanks, Inc. v. Warren Concrete Products Co., 374 F.2d 649 (3rd Circ, 1967); Gillam v. A. Shyman, Inc., 205 F.Supp. 534, (Alaska, 1962); Adams Dairy Co., supra.

B. The Court Errored and Abused Discretion in denying petitioner's motion to strike motions of Defendants to award them attorney fees.

As noted above, there is no legitimate basis for considering awarding defendants

attorney fees or discovery expenses in this case. Motion for attorney fees was made under color and pretense of C.R.S. 1973, 13-17-101, supra. The statute is in derrogation of common law, is penal, and establishes a new liability for use of courts. It must be strictly interpreted. 82 C.J.S. §§ 389, 393, and 394. The statute clearly states that it applies to use of courts of the state. The Colorado legislature has no jurisdiction of use of federal courts. The United States District Court is not a court of the state of Colorado. The District Court refused to strike defendants' motion under color of that statute and indicated that it would countinue to or would again entertain motions for attorney fees. (Page A-38 and A-42). As long as those motions are entertained, or to be allowed, they are a threat to this petitioner's and to anyone else's use of federal courts.

Consistent with the abuse in order of $48,000 bond, the allowance of motions for attorney fees is a threat that the Court will also abuse "discretion" and enter an exorbitant judgment against this plaintiff as punishment and retaliation for bringing and now maintaining this action against these defendants. Motions and claim by any other procedure or pleading for award of attorney fees and/or discovery expenses by defendants must be ordered stricken and not to be allowed by this Supreme Court to remove such threat against this or any other plaintiff for bringing action in any federal court. 1st, 5th, 7th Amendments, U.S. Constit.; 13 U.S.C. § 241; 42 U.S.C. §§ 1983, 1985, 1986.

C. Dismissal of Selected Allegations was without authority and in excess of jurisdiction

Rule 12(b)(6), F.R.C.P., provides for

dismissal for failure to state a claim for which relief can be granted. No rule provides for "dismissal" of particular selected allegations. The district court dismissed paragraphs of the complaint numbered 40-53, 63-68, and 103. (Pages A-69 through A-71). Elimination of those allegations was inappropriate done under any label. Those allegations dismissed under color of Colorado Statute of limitations for actions for libel and slander contain far more than allegations of libel and slander. They are essential all egations of unlawful overt acts upon which the claims of wrongful interference with business and outrageous conduct are based. Other courts have held that the facts and circumstances constituting the cause of action for conspiracy and particularly the acts which constitute the gravamen of the action

must be alleged with particularity. 15A C.J.S. pp. 669,675,681; Hoffman v. Halden 268 F.2d 280 (9th Circ,1959); Powell v. Workmen's Comp. Bd. of State of New York, 327 F.2d 131 (2nd Circ, 1964). Rule 9(b), F.R.C.P., requires all averments of fraud to be stated with particularity. The dismissed allegations include particulars of fraud, deceit, and pretext alleged in paragraphs 61,62,69 and 91.

Bar by statute of limitation is an affirmative defense and must be pleaded. Rule 8(c), F.R.C.P. Statutes of limitation have been held by other courts to not be grounds for dismissal by motion as the district court did here. Baker v. Sisk, 1 FRD 232 (Okla,1938); Topping v. Fry, 147 F.2d 715 (7th circ,1945); Bergeron v. Mansour, 152 F.2d 27 (1st Circ,1945); Smith v. Kent Oil Co., 261 P.2d 149 (Colo,1953)

In dismissing claims of libel and slander as acts in conspiracy to injure business the Court is in conflict with established Colorado law, prior decision of the Court of Appeals for the Tenth Circuit, and with the generally accepted rule. Clark v. Machette, 92 Colo 365, 21 P. 2d 182 (1933); Hughes v. Reed, 46 F. 2d 435 (10th Circ, 1931); 53 C. J. S. p. 983; 12 C. J. p. 612; Rogers v. Rogers, 96 Colo 473, 44 P. 2d 909 (1935); Murto v. Lemon, 19 Colo. App. 314, 75 P. 160 (1903); Equitable Securities v. Johnson, 36 Colo. 377, 85 P. 840 (1906).

The action is not for libel. It is an action for interference with business and outrageous conduct. Action for wrongful interference with business can be based upon statements that are true if made for the purpose of damaging business. U. S. Aluminum Siding Corp. v. Dun & Bradstreet, Inc., 163 F. Supp.

906 (S.D.NY, 1958); Huskie v. Griffin, 74 A. 595 (N.H., 1909).

Paragraph 103 was dismissed with the reason, "Plaintiff has no standing to make claims on behalf of those individuals." (A-71) The plaintiff is obviously suing for his own damages and in behalf of no one else. The doctrine of standing to sue is irrelevant. Associated Industries of New York State v. Ikes, 134 F.2d 694 (2nd Circ, 1943). The allegations of paragraph 103 clearly relate to damage to petitioner's professional practice by intimidation and abuse of those who would otherwise do business with him. Lohse Patent Door Co. v. Fuelle, 114 S.W. 997 (Mo, 1908). It relates to abuse and damage to the plaintiff's witnesses and potential witnesses and the encompassed conspiracy to suborn perjury as a part of the larger conspiracy to injure business. Annot. 31

A. L. R. 3d 1438; Newin Corp. v. Hartford Accident and Indemnity Co., 31 N. Y. 2d 211, 333 N. E. 2d 163 (1975); Robinson v. Missouri Pacific Transp. Co., 85 F. Supp. 235 (W. D. Ark, Hot Springs Div., 1949); 15 C. J. S. p. 1027. Paragraph 103 also relates to conduct maliciously inflicted upon the supporters of the petitioner for the ultimate purpose of intentionally causing the petitioner severe emotional distress.

The dismissal of allegations was without procedural authority and substantively denies the petitioner of right of trial of his grievances and of the issues of the case. 7th Amendment.

D. Striking of Parts and All of the Complaint was without authority, in excess of jurisdiction.

Rule 12 (f) , F. R. C. P., provides, "... the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous

matter." Other courts have held that matter stricken from the complaint must clearly fall within those four categories. Card v. Elmer C. Breur, Inc., 42 F. Supp. 701 (Oh, 1941); Bowles v. Krause Milling Co., 62 F. Supp. 244 (Wis, 1945); Courteau v. Interlake S. S. Co., 1 FRD 429 (MIch, 1940); United States use of Deane Rowley Const. Co. v. Rowley Const. Co., 2 FRD 6 (RI, 1941). The Court made no finding related to the paragraphs stricken, but indicated a reason was "insufficient." (Page A-74). The Court threatens to strike allegations that are "argumentative." (A-75) It is submitted that almost any allegation could be found to be "argumentative." Those are not reasons usually allowed to strike complaint allegations.

The following interpreta tions of Rule 12 (f) made by various courts are in conflict with the acts of the Court here. Striking is a drastic measure to be resorted to only when required for purposes of justice, is not favored, is to

be used sparingly, and the authority is strictly construed. Butler v. Pollard, 482 F.Supp. 847 (Okla, 1979); Fuchs Sugars & Syrups, Inc. v. Amstar Corp., 402 F. Supp. 636 (NY, 1975); Brown & Williamson Tobacco Corp. v. U.S., 201 F.2d 819 (6th Circ, 1953); Augustus v. Bd. of Pub. Instruction, 306 F.2d 862 (5th Circ, 1962); Johnson v. Am. Aviation Corp., 64 FRD 435 (N.D., 1974); Clark v. Atlanta University, Inc., 65 FRD 414 (Ga, 1974). Any doubt as to motion to strike should be resolved in favor of denying the motion. Daughtery v. Firestone Tire and Rubber Co., 85 FRD 693 (Ga, 1980); Schramm v. Krischell, 84 FRD 294 (Conn, 1979). This is particularly true in "big" cases such as antitrust actions. Federated Dept. Stores, Inc. v. Grinnell Corp., 287 F.Supp. 744 (NY, 1968); United States Dental Institute v. Am. Assoc. of Orthodontists, 396 F.Supp.

565(Ill., 1975); Van Dyke Ford, Inc. v. Ford Motor Co., 399 F.Supp. 277 (Wis, 1975); South Side Drive In Co. v. Warner Bros. Distributing Corp., 30 FRD 32 (Pa, 1962). In order to strike it must be clear that the portion stricken has both no bearing on the subject matter of litigation and that its inclusion will unduly prejudice the other party. FRA S.p.A. v. Surg-O-Flex of America, Inc., 415 F.Supp. 421 (NY, 1976); Pittson-Luzerne Corp. v. U.S., 86 F.Supp. 460 (Pa, 1949). Allegations concerning particulars of fraud should not be stricken. Rule 9(b); Canadian Ingersoll-Rand Co. v. D. Loveman & Sons, Inc., 227 F.Supp. 829 (Oh, 1964). Allegations of evidential facts in cases involving complex issues, although unnecessary under rule of brevity, are not stricken if not prejudicial. Randolph Laboratories, Inc. v. Specialties

Development Corp., 62 F.Supp. 897 (NJ, 1945). Allegations providing better understanding of a claim for relief by providing background facts are not to be stricken. Hoffman Motors Corp. v. Alfa Romeo S.P.A., 244 F.Supp. 70 (NY, 1965); U.S. v. Crown Zellerbach Corp., 141 F.Supp. 118 (Ill, 1956); Fuchs Sugars & Syrups, Inc. v. Amstar Corp., supra; U.S. use of Deane Rowley Const. Co., supra; Groves v. Paden City Glass Mfg. Co., 2 FRD 300 (W.Va., 1942). Striking is not to be used to determine disputed substantial questions of law. Augustus v. Bd. of Pub. Instruction, supra.

The Court ordered stricken paragraphs 55, 60, and 75-79 and then the entire complaint. (pages A-75, A-77, A-78). There was no showing or finding whatsoever that the stricken parts were within Rule 12(f). That the court could find that the complaint

could not be dismissed for failure to state a claim (page A-71) and then strike the entire complaint is on its face a gross abuse of discretion, without authority, and in excess of jurisdiction. Other courts have held that striking is not to be used as here to make meaningless or to dismiss all or part of a complaint. Egan v. Pan American World Airways, Inc., 62 FRD 710 (Fla, 1974); Mahoney v. Bethlehem Engineering Corp., 27 F. Supp. 865 (NY, 1939).

E. More Definite Statement was ordered without authority and in abuse of discretion

The motions of defendants were for particulars and requests for details and particularly for facts solely in their knowledge. Bills of particulars were abolished by the 1946 Amendment to Rule 12(e).

It has been found to be an abuse of discretion to use Rule 12(e) to order plaintiff

to amend his complaint which was sufficient to withstand a motion to dismiss. Mitchell v. E-Z Towers, Inc., 269 F. 2d 126 (5th Circ, 1959); Similar, Sopkin v. Missouri Nat'l Life Ins. Co., 222 F. Supp. 984 (Mo, 1963); Floe v. Plowden, 10 FRD 514 (S. Car., 1950); Wishnick v. One Stop Food & Liquor Store, Inc., 60 FRD 496 (Ill., 1973); Hodgson v. Virginia Baptist Hosp, Inc., 482 F. 2d 821 (4th Circ, 1973).

No specific allegations were found by the Court to be unintelligible. There is no reason why all allegations cannot be admitted, denied, or answered that due to lack of information they are denied. That is all that is required as far as Rule 12 (e) is concerned. Ehrman v. U.S., 4 FRD 29 (NY, 1941).

F. Order to Separately State Claims and Counts as to each defendant was arbitrary, unreasonable, in abuse of discretion.

The petitioner was ordered to separately state claims and counts as to each defendant. (Pages A-78, 79, 80). That is inconsistent with the basic nature of the lawsuit. Conspiracy is alleged, and joint and several liability for all acts is alleged. All allegations apply to each and every defendant. As to whether a specific act was committed by a specific defendant, such is specified in the complaint as known by the petitioner. Each defendant has it within his knowledge as to whether he committed acts alleged. The two claims for relief are already alleged in separate counts. See Lowe v. Consolidated Edison Co., 1 FRD 559, 562 (NY, 1940). The order needlessly requires massive, overwhelming paper work and would lengthen the complaint to more than 20 times its present length. The loss of time and expense would be worthless to all parties, except

for its harassment value. See Nagler v. Admiral Corp., 248 F.2d 319 (2nd Circ, 1957).

F. Order to amend the complaint was unreasonable and in excess of jurisdiction

The petitioner submits that the 1st and 7th Amendments guarantee him the right to present his grievances in trial for redress of injuries. This Court denies that right. The Court presented inconsistent criticism of the complaint, and ordered conditions which excluded the petitioner's grievances. It imposed impossible conditions as to the complaint to maintain the lawsuit. The two claims for relief are clearly designated in capital letters. The essential elements of those two claims for relief are clearly alleged. Acts of the defendants, motives for those acts, and damages resulting are plainly alleged in language that is easily understandable.

No mistakes in spelling, grammar, or diction have been cited which then might be corrected. Anyone can state that any writing is unintelligible. By reasonable objective standards, there is no reason that the complaint cannot be understood. The finding that it is unintelligible by the judge is subjective, and the petitioner submits that no objective reason being apparent or found, the finding is arbitary and unreasonable.

The Court complains of the length of the complaint. On the other hand the Court requires more specificity including more specificity of the damage to the petitioner's "trade" due to violations of antitrust laws. (Pages A-73, A-74). The court in Gretener, A.G. v. Dyson-Kissner Corp., 298 F.Supp. 350 (NY, 1969) held that allegation that a defendant violated antitrust laws to the

detriment of the plaintiff and the public and that such violations proximately caused damage to the plaintiff sufficiently alleged a cause of action. The petitioner's complaint supplies the necessary details, even though those details are not in the liking of the court. In other gross inconsistency with Rule 8(a), F.R.C.P., and its criticism of the length of the complaint, the court ordered separate counts and claims as to each defendant. After denial of motions directed to failure to aver time and place, (A-78), the court ordered enlargement of the complaint by requiring the plaintiff to set forth time and place of allegations and particularly those known only to the defendants in the conspiracy. (A-80) The court ordered enlargement of the complaint in requiring details of fiduciary duties and contracts which include particulars already supplied defendants in memoranda

and in answers to interrogatories.

The most frustrating and impossible requirement is the framing of a proper complaint of the issues of this case not subject to dismissal and yet omit basic allegations essential to maintain actions for conspiracy and outrageous conduct which the Court has ordered dismissed and stricken.

G. Motions by petitioner to Compel Discovery were denied in abuse of discretion and in conflict with decisions of this Supreme Court

Defendants refused to answer interrogatories, produce documents, and to appear for depositions. The petitioner was denied any and all discovery from most defendants, and essential discovery from all defendants. This is in conflict with Rules 1, 26, 34, 36, 37, and Conley v. Gibson, 355 U.S. 41, 2 L.Ed.2d 80, 78 S.Ct. 99. Denied discovery included:

(1) identification of real parties who are paying for litigation expenses of defendants, (2) documents published by Hartford to Brittain (paragraphs 40 and 45 of complaint), (3) documents published by Pryor (paragraph 51 of complaint), (4) correspondence about the petitioner and his insurance including that referred to in paragraphs 64-68 copy of which C.R.S. 12-43.5-102(3)(c) mandatorily required defendants to furnish the petitioner. (5) minutes of meetings of the Risk Management Committee, (6) identification of persons attending those meetings, (7) information concerning all physicians whose patients' medical records have been requested for examination by the Risk Management Committee and/or Hartford personnel, (8) records of actions taken against Doctors Hutchinson and Shidler by BCH, and (9) assets and income of each defendant.

No findings were made by the Court upon which denial of motions to compel discovery was based. Since the Court refused to grant the petitioner any discovery requested including order for defendants to appear for depositions, sanctions threatened by the Court (page A-87) for failure to respond to discovery are obviously directed only at the petitioner. Discovery was to have been completed by January 15, 1982. The Court stayed all discovery on January 11, 1982, in the face of depositions noticed to be taken in Colorado on January 13, 1982, by the plaintiff. The order was mailed January 11, 1982, to the plaintiff in Oregon.

Closure of Court Complete

The presiding judge's orders must be considered in entirety to understand the purpose and impact. He ordered the petitioner to post a prohibitive bond in the

amount of $48,000 after determining that the petitioner was probably unemployed. He refused to strike motions to award the defendants attorney fees thereby maintaining a continuing threat of possible award of an exorbitant judgment against the petitioner. He then secured the closure by adding impossible conditions of the complaint which included omission of essential allegations and the grievances of the plaintiff-petitioner. Even if the orders of cost bond and attorneys fees threats are removed, the court will still be closed by the abuses of misapplications of procedural rules. The matter cannot be considered piecemeal. Either there is a right to trial or there isn't. A right to trial is a right to trial of the matters complained of and not the matters suiting the judge.

Order of cost bond, threat of award of attorney fees and discovery expenses against the plaintiff-petitioner, and impossible procedural conditions need to be addressed in totality to correct arbitrary closure of the federal courts to the petitioner and others. This petition should be considered together with petitions #81-2007 and #81-2139 for a more total picture of the conspiracy to close courts.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald E. Tyler

Counsel for petitioner, pro se

1092 S.W. 2nd Avenue

Ontario, Oregon 97914

Telephone (503)-889-5109

June 8, 1982

APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

DONALD E. TYLER, Plaintiff, vs. HARTFORD FIRE INSURANCE COMPANY, et a., Defendants	) MOTION TO ALTER OR AMEND JUDGMENT

COMES NOW the plaintiff pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and submits his motion to alter or amend the judgments and dismissal of this case ordered April 21, 1982, and entered pursuant to such orders.

AS GROUNDS, the plaintiff submits:

1. Motions to dismiss for failure to state claims for which relief can be granted as to

each and all defendants, jointly and severally, were properly denied on February 17, 1982.

2. This court on February 17, 1982, ordered the plaintiff to submit a "cost" bond for purposes of defendants in the amount of $2000.00 for each defendant and totaling $48,000.00; and that order included that in the event of failure of the plaintiff to submit such a bond that the case would be dismissed.

3. The U.S. Court of Appeals for the Tenth Circuit has refused to prohibit the enforcement of the aforementioned order and refused to order stay of proceedings pending time for the plaintiff to seek review by the U.S. Supreme Court.

4. Under color and obvious pretense of Colorado statutes, defendants submitted motions that the plaintiff be required to pay their attorney fees.

5. This Court has refused to grant plaintiff's motion to strike those motions for attorney fees in order to eliminate the threat of assessment of defendants' attorney fees against him by this Court acting in excess of jurisdiction consistent with its order of "cost" bond aforementioned.

6. Dismissal of this case and entry of judgments in favor of the defendants as a result of this Court's orders issued April 21, 1982, because of plaintiff's refusal to submit a bond for defendants' purposes in amount of $48,000.00 is an abuse of discretion, exceeds this Court's jurisdiction, and is an unprecedented gross violation of the basic principles for which a war of independence was fought and which were incorporated in the Amendments of the U.S. Constitution as essential to its initial ratification by the

people as a restriction upon this Government and upon this Court.

7. Other erroneous orders issued February 17, 1982, in abuse of discretion and in excess of jurisdiction which have made it impossible to maintain this action include:

(a) Dismissal of selected allegations of the complaint,

(b) The striking of parts of the complaint and of all of the complaint,

(c) Order for more definite statement,

(d) Order for separate counts and claims as to each defendant,

(e) Denial of motions of petitioner to compel discovery, and

(f) Requirement of petitioner, appearing pro se from Oregon, to confer with counsel for defendants prior to moving the Court to compel discovery or alter time schedules.

8. Dismissal of this case and entry of judgments in favor of defendants in the presented circumstatnces and for the foregoing reasons and means is an illegal closure of the federal courts to this plaintiff.

9. Dismissal of this case and judgments entered for defendants deprives the plaintiff without due process of law and under color of state statutes of property and valuable rights guaranteed by the preamble, 1st, 5th, and 7th Amendments and Art. III, sec 2, Art. IV, sec 2 of the U.S. Constitution, and in violation of 13 U.S.C. § 241 and 42 U.S.C. §§ 1983, 1985 and 1986.

WHEREFORE, the plaintiff moves that this Court alter and amend judgments ordered and dismissals ordered April 21, 1982, and judgments and dismissals entered pursuant to those orders at that time or any other time

by vacating and striking all such orders and entries of judgments and dismissals.

DATED: April 26, 1982

By (signed) D.E. Tyler
Donald E. Tyler
Attorney for plaintiff, pro se
1092 S.W. 2nd Ave
Ontario, Oregon 97914
telephone (503)-889-5109

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

DONALD E. TYLER,	DATE: April 28, 1982
Plaintiff	Action No.: 81-F-1287
vs.	MINUTE ORDER
HARTFORD FIRE INSURANCE COMPANY, et al.,	
Defendants	

ORDER ENTERED BY JUDGE SHERMAN G. FINESILVER:

The Court is in receipt of plaintiff's Motion to Alter or Amend Judgment filed on April 29, 1982. In this motion, plaintiff claims that the Court erroneously dismissed this action because of plaintiff's refusal to submit a cost bond as ordered.

At a hearing conducted on February 17, 1982, the Court directed plaintiff to furnish

a cost bond in the amount of $2000 per defendant no later than the close of business on March 15, 1982. Plaintiff was repeatedly warned that failure to file such a bond would result in dismissal of the case. Nevertheless, plaintiff failed to furnish the bond and unequivocally indicated to the Court that he did not intend to furnish the bond. Section 13-16-102 of the Colorado Revised Statutes states, "If such plaintiff neglects or refuses, on or before the day ... named, to file such instrument (a cost bond), the court, on motion, shall dismiss the suit." On April 21, 1982, this Court conducted a hearing on defendants' motions for entry of judgment. Plaintiff elected not to appear at the hearing and filed a waiver which, once again, indicated that he had no intention of filing the ordered bond. In accordance with the

provisions of the statute, the Court granted the several motions of the defendants and dismissed the case. Such dismissal does not amount to error.

Accordingly, plaintiff's Motion to Alter or Amend Judgment is hereby DENIED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

DONALD E. TYLER,	)
	) REPORTER's
Plaintiff,	)
	) TRANSCRIPT
v.	)
	) MOTIONS FOR
HARTFORD FIRE	)
	) JUDGMENT
INSURANCE CO., et al.,	)
	)
Defendants.	)

Proceedings before the HONORABLE SHERMAN G. FINESILVER, Chief Judge, United States District Court for the District of Colorado, begininning at 2:00 o'clock p.m., on the 21st day of April, 1982, in Courtroom 201, United States Courthouse, Denver, Colorado.

APPEARANCES

ROBERT RUDDY, Attorney at Law, Johnson, Mahoney & Scott, 414 Hilton

Office Building, 1515 Cleveland Place, Denver, Colorado, appearing on behalf of Defendants Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., Carl McLaughlin, M.D., Galen Marks, M.D., Robert Larsen, M.D., Thomas H. Mitchell and Grant Miller, M.D.

DONALD E. LaMORA, Attorney at Law, 430 North Tejon, Colorado Springs, Colorado, appearing on behalf of Defendants Warren & Sommer, Inc. and William Buckman.

ELLEN REATH, Attorney at Law, Sherman & Howard, 2900 First of Denver Plaza, 633 Seventeenth Street, Denver, Colorado, appearing on behalf of Defendant Peter Pryor.

STEPHEN D. DAWSON and PAUL D. COOPER Attorneys at Law, Cooper & Kelley, 1444 Wazee, #330, Denver, Colorado, appearing on behalf of Defendants Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber.

PATRICK WILLIAMS, Attorney at Law, Gehler & Cohen, 6755 East 72nd Avenue, Commerce City, Colorado, appearing on behalf of Defendants Richard Evans and Terry Fields.

FRANK R. KENNEDY, Attorney at Law, 1444 Wazee, #330, Denver, Colorado, appearing on behalf of Defendant John Mott.

SUSAN SMITH FISHER, Attorney at Law, Hansen & Breit, Suite 960 Writer Square, 1512 Larimer Street, Denver, Colorado, appearing on behalf of Defendant St. Paul Insurance Companies.

PROCEEDINGS

THE COURT: May we take our case 81-F-1287, Donald Tyler vs. Hartford Fire Insurance, et al. Let me call the attorneys' names, if I may in the order in which I have them please.

Is Mr. Tyler here?

(Whereupon, there was no response.)

THE COURT: The record should reflect that no one responds to the name of Donald E. Tyler. The hour now is 2:05.

Robert Ruddy, please.

MR. RUDDY: Present, your Honor

THE COURT: You represent Defendants Hartford Fire Insurance Company, the Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, Wilfred Stedman, James A. Henderson, Joseph H. Poynter, Carl McLaughlin, Galen

Marks, Robert Larsen, Thomas Mitchell and Grant Miller, all doctors; is that correct, please?

MR. RUDDY: yes.

THE COURT: Mr. LaMora.

MR. LaMORA: Present, your Honor.

THE COURT: You represent Defendants Warren & Sommer and William Buckman.

MR. LaMORA: Yes, your Honor.

THE COURT: Ms. Reath, please.

MS. REATH: Ellen Reath on behalf of Defendant PeterPryor.

THE COURT: Thank you. Mr. Cooper, you and Mr. Dawson represent Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber; is that correct, please?

MR. DAWSON: That's correct.

MR. COOPER: That's correct

THE COURT: Mr. Gehler, please.

MR. WILLIAMS: Patrick Williams of the office of Gehler & Cohen, your Honor.

THE COURT: You represent Defendants Richard Evans and Terry Fields; is that correct, please?

MR. WILLIAMS: Correct.

THE COURT: Thank you. Mr. Kennedy, you represent Defendant John Mott; is that correct, please?

MR. KENNEDY, Yes, your Honor.

THE COURT: Thank you. Mr. Breit?

MS. FISHER: Mr. Breit is not here, your Honor. I am Susan Smith Fisher from Hansen & Breit representing the St. Paul Insurance Companies.

THE COURT: Thank you. Have I omitted anyone? Have all Defendants been noted by the Court?

(Whereupon, there was no response.)

THE COURT: I would like to ask if any of the attorneys have had recent communications or correspondence with plaintiff Tyler in regard to the matters that's set forth this afternoon?

MR. COOPER: We received a waiver of appearance by Mr. Tyler.

THE COURT: Mr. Cooper, why don't you make a statement if you would, please, as to what you understand the posture of this case is at this time, please.

MR. COOPER: As I read his--I don't have a copy of it with me right now--I thought that it would be received by the Court. He basically indicates for a number of reasons why he does not appear today. States he refers to the $48,000 cost bond that was--

THE COURT: What date is that communication, please?

MR. COOPER: The certificate of mailing showed it was mailed to attorneys of record on April 15th, 1982, and he indicates in essence that he does not wish to comply with the Court order.

THE COURT: To my knowledge we have never received this communication. [1]

MR. COOPER: Oh. It indicates that he does not wish to attend this hearing. Does not wish to comply with the earlier Court orders about amending the complaint and filing a cost bond, and recites the history of the proceedings in the Tenth Circuit and says while he does not want to appear or

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1. (This footnote is added). The document referred to is printed in this Appendix A, starting on page A-45. It was mailed by certified mail, and the return acknowledgment of receipt indicates that it was received by the clerk's office on April 19, 1982, two days before this hearing.

or waives his right to appear at the hearing today, in paragraph 18 he indicates that he wants a verbatim transcript of the record to be made of this hearing, and that he does not waive his right to seek review of any orders entered here by appropriate courts or other proceedings.

THE COURT: Counsel, I suggest that you--since we have not received this, will you have your copy marked as an exhibit, please. We will have it photostated and see that you get it back, do you understand?

MR. COOPER: This is Ms. Reath's copy, but I will.

THE COURT: Let's refer to this as combined Defendants' Exhibit A, please.

MR. COOPER: I will tender same to the Court.

THE COURT: Have all defense counsel received a copy of this waiver of hearing?

MR. WILLIAMS: Yes, your Honor.

MR. LaMORA: Yes, your Honor.

THE COURT: Based on this hearing, Mr. Cooper, what is your request, please?

MR. COOPER: We would request that the matter be dismissed with prejudice as to all defendants for failure to comply with the earlier order of the Court.

THE COURT: With prejudice?

MR. COOPER: And for the underlying reasons made in those motions.

THE COURT: With prejudice or without prejudice?

MR. COOPER: With prejudice.

THE COURT: Who else would care to address themselves to this matter, please? Identify yourself for the record also, please.

MS. REATH: Ellen Reath on behalf of Defendant Peter Pryor. In the Court's earlier ruling, I believe the allegations

against Mr. Pryor were dismissed. They were not necessarily subject to being amended or refiled. They were dismissed because the allegations concerned slander and libel and are barred by the Colorado Statute of Limitations, so therefore it's our position those were--if they were not already dismissed should be dismissed today with prejudice. Even if Mr. Tyler were to refile his complaint he would not be able to correct the defects in those allegations.

MR. KENNEDY: Your Honor, Frank Kennedy on behalf of Defendant Mr. John Mott. Mr. Mott's position is much the same as Mr. Pryor's in that the only specific allegations against him appear to be directed to two issues, and that was conspiring to put on false testimony in a state court action, which I believe we have cited in our brief the

Tenth Circuit has stated is not actionable, and the second one is libel and slander which the Court did dismiss the libel and slander allegations which the Court did dismiss at the prior hearing. (sic)

So our position would be much the same as Mr. Pryor's in that we believe all of the claims against Mr. Mott have already been dismissed, and would not be subject to correction, even if Dr. Tyler would file an amended complaint.

Mr. Mott would also like it to be clear that his motion to dismiss the complaint with prejudice would be for two reasons, and that would be Dr. Tyler's failure to post the cost bond which certainly in Mr. Mott's opinion more than justified based on the type of complaint that was filed, 24 separate defendants, and also Dr. Tyler's history of

other actions which this Court is certainly aware of because they have been assigned to this Court, 80-F-1305, 80-F-1285, 81-F-1290 and 79-F-864, but in addition to the cost bond, we would also like moving for dismissal because Dr. Tyler has failed to even file an amended complaint which the Court gave him an opportunity to try to restate his claim in a more succinct way as to state his causes of action.

THE COURT: Anyone else care to address themselves to this matter, please?

(Whereupon, there was no response.)

THE COURT: Again, is Donald E. Tyler here, please?

(Whereupon, there was no response.)

THE COURT: The record should reflect that no one responds to the Court's call.

The nature of the case is as follows: That

Plaintiff Donald E. Tyler has filed suit against 24 individual and corporate defendants on several charges which appear to stem from the cancellation of Dr. Tyler's malpractice insurance and circumstances surrounding his termination from the Brighton Community Hospital. The complaint seeks compensatory and punitive damages in excess of $15,000,000 on numerous antitrust, civil rights, contract, tort and conspiracy claims.

The Court conducted a pretrial conference in this case on February 17th, 1982. At that time the Court granted Defendants' motions for cost bond, and ordered Plaintiff to furnish such bond in the amount of $2000 per defendant by the close of business on March 15th, 1982.

The Court similarly granted Defendants' motion to strike the complaint and ordered the Plaintiff to file an amended complaint on

or before the 17th of March, 1982.

Our review of the record this date, and the Court files reflect that the Plaintiff has not filed either an amended complaint or a cost bond. His attempts to stay proceedings while taking appeals to the Tenth Circuit Court of Appeals, United States Supreme Court, have been denied.

Defendants have moved for entry of judgment based on Plaintiff's failure to comply with the Court order, and Plaintiff has indicated that he does not intend to file either a cost bond or an amended complaint.

We are referring to Plaintiff's response to motions to enter judgment filed April 12th, 1982. By minute order dated March 26th, 1982, this matter was set down for hearing this afternoon. The following motions are pending: Motion for entry of judgment filed by

Hartford Fire Insurance and others on March 18th, motion for entry of judgment filed by Defendant Warren & Sommer, Inc. and William Buckman on March 22nd, motion for entry of judgment filed by Defendant Peter Pryor on March 23rd, joinder in motion for entry of judgment filed by Defendant St. Paul Fire Insurance Co. on March 24th, 1982, motion for entry of judgment and attorney's fees filed March 26th by Defendant Richard Evans and Terry Fields, joinder and motion for entry of judgment filed by Defendants Brighton Community Hospital Association, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber, April 2nd, 1982.

Also these motions appear in the file: Plaintiff's motion to strike the motions for attorney's fees filed on April 12th, 1982, and Plaintiff's motion to strike the affidavits by Patrick Williams and Chris Melonakis filed

April 12th, 1982. We also have in hand--

MR. KENNEDY: Your Honor, may I?

THE COURT: Please.

MR. KENNEDY: On April 2nd, 1982, in addition to Brighton Community Hospital, Defendant John Mott also filed a similar motion.

THE COURT: The record will so reflect. I appreciate you bringing it to the Court's attention. The Court has in hand an instrument designated "Waiver of Hearing" which was dated April 15th, 1982, and signed Donald E. Tyler, attorney for Plaintiff pro se, 1092 S.W. 2nd, Ontario, Oregon 97914, and a telephone number. The Waiver of Hearing is generally as outlined by Mr. Cooper. It is in 21 paragraphs, and in effect reflects that, to wit: Paragraph 10, "The hearing scheduled April 21st, 1982, is noticed

to act on defendants' motions to dismiss because of failure of the plaintiff to submit the aforementioned bond."

Paragraph 11, "The plaintiff does not intend to submit the aforementioned bond."

Paragraph 12, "The plaintiff relied upon the 1st, 5th and 7th Amendments of the U.S. Constitution and had no reason to believe that this Court could condition use of the United States District Court in this case upon the posting of a bond in the amount of $48,000.".

Paragraph 13, "The hearing scheduled April 21, 1982, is also noticed to act upon motions for attorney's fees by defendants Evans and Fields."

14, "Plaintiff has submitted reasons why those motions should not be granted, and the motions and memoranda of the plaintiff directed to that issue are incorporated herein by this reference."

Paragraph 15, "The plaintiff believes that similarto the proceeding on February 17, 1982, that issues subject of the hearing scheduled April 21st, 1982, have been pre-decided."

Paragraph 16, "The plaintiff has submitted responses to motions of defendants which are incorporated herein by this reference."

Paragraph 17, "The plaintiff believes that a trip to Colorado to attend the hearing scheduled April 21, 1982, will unnecessarily jeopardize his health and unnecessarily cost him considerable time and money."

Paragraph 18, "Therefore, the plaintiff waives his right to appear at the hearing on April 21st, 1982."

Paragraph 19, "The plaintiff does not waive right of hearing on matters not noticed to be subject of hearing April 21st, 1982."

Paragraph 20, "The plaintiff does not waive right to seek review in and by appropriate courts and other proceedings"

Paragraph 21, "Plaintiff requests that the entire hearing and entire proceedings on April 21st, 1982, be recorded in entirety and verbatim."

Is Donald E. Tyler here? It is 2:20 and no one responds to the Court's call. The Court has admitted the exhibit in as being "Waiver of Hearing." The concern of the Court is whether we dismiss the case with or without prejudice.

Does anyone else care to make any additional statements in regard to Mr. Cooper, Mr. Mott and Mr. Pryor? Anything further in this regard, please? Please.

MR. WILLIAMS: Patrick Williams appearing on behalf of Defendants Fields and

Evans. I don't know whether the Court wants to take up our request for attorney's fees.

THE COURT: Counsel, while you are on your feet, why don't you address yourself to that matter?

MR. WILLIAMS: Okay. If it please the Court, on the request for attorney's fees, we have filed an affidavit by myself and also verified to by another attorney who has reviewed my files and the work that I have done. In Dr. Tyler's responses as the Plaintiff to this action, the main thrust is that this Court is without jurisdiction to award attorney's fees pursuant to a state statute. I would cite to the Court the case of Morton v. Allied Stores Corporation, 90 FRD 352, a 1981 decision from the District Court, United States District Court for the District of Colorado. It was Judge Chilson. And that specific issue was brought before the Court

and the Court did rule that that specific statute is applicable to an action which is in the federal court.

THE COURT: I agree with that, counsel.

MR. WILLIAMS: Okay. In this case, your Honor, there was discovery with reference to the allegations that Dr. Tyler made against these two specific defendants. Depositions were taken by Dr. Tyler of both of these defendants. He propounded a first set of interrogatories to all defendants which we did reply to. We submitted a first set of interrogatories to him which he submitted some answers to. The only other interrogatories which were submitted were again to all defendants, and then a stay order was entered so there was significant discovery. In that discovery your Honor-- and I have referred to it in my brief-- the thrust of Dr. Tyler's complaint is that

on July 1st of 1977, these two individuals were acting as police officers in the City of Brighton. A call was made into the dispatcher, and these two officers responded to the Platte Valley Medical Clinic where they received information from a third party regarding some activity of Dr. Tyler. The third party information these two defendants in this action that Dr. Tyler had just lost a civil lawsuit in state court, and the third party indicated that the third party had heard that Dr. Tyler was seen carrying a gun, and they were concerned about his enemies. With respect to Officer Evans, all he did was collect that information, make a report and file it in the Brighton Police Department. He had no other connection with Dr. Tyler at all. Defendant Terry Fields from that point then went with another officer who was Lieutenant

Ward now with the Brighton Police Department. They went over to Dr. Tyler's apartment that evening to talk to him about this situation. Dr. Tyler alleged in his complaint that Defendant Fields was overbearing, agitated, annoying, things of that nature. The deposition of Defendant Fields contradicts that, and says no, we merely went there to discuss the situation with Dr. Tyler to inform him that we had received this report, and to hopefully-- that would be an end to it. No charges were ever filed against Dr. Tyler, nothing was ever done as a follow-up after that discussion was held. In my interrogatories to Dr. Tyler with respect to both of these defendants, I asked for all specifics, all facts that he had which would support his claims against these two individuals, and all

I received back was conclusions that they had to be acting in conspiracy with all these other people, that they violated his rights, et cetera. But when I asked for language, acts, what they did, I received no information from Dr. Tyler supporting his claim against these two officers. I think clearly with respect to Defendant Evans who was the officer who merely took a report from a third party and filed his report in the Brighton Police Department, the action against him has no grounds in law or fact. He never had any contact with the Plaintiff. He never did anything as a follow-up. With respect to Defendant Fields, the only additional work that he did was go to the home of Dr. Tyler, the residence. There is no indication of forced entry, there is no indication of any physical assault. Again I asked for

language that annoyed, harassed, intimidated Dr. Tyler. There was no response in the interrogatories as to any specific language. So I would state that the facts as opposed to the conclusions made by Dr. Tyler clearly indicate that all these two officers did was act in the line of their duty, respond to a call and make a police report which is clearly within the ambit of their duties as law enforcement officers, and that there was no basis in fact or law to bring the action against these two officers. If Dr. Tyler may have had a complaint for conspiracy against these various medical personnel, it may be that Defendants Fields and Evans could have been witnesses. That would be their only connection with this case at all. [1]

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1. There was no notice that motion for summary judgment by these defendants was set for hearing on this date. Discovery and facts are misrepresented. See pages A-47, paragraph 10, A-148, paragraph 13, A-49, paragraph 19.

THE COURT: Thank you very much. Please. Mr. LaMo ra.

MR. LaMORA: May it please the Court, Donald E. LaMora on behalf of the Defendants Warren & Sommer and Buckman.

Addressing the Court's concern over whether the dismissal should be with or without prejudice, under the rules generally the dismissals are with prejudice unless there is some reason shown that there be reason without prejudice. In the instant case I would further submit that Dr. Tyler has had the benefit of dismissal without prejudice up to this point in time, and that the Defendants are entitled to a dismissal with prejudice so that this matter can proceed to appellate review, if that's what Dr. Tyler's choice is. On behalf of our defendants, we filed a number of motions when the case was

originally presented. However, we did elect to participate in discovery, and responded to discovery, and we have spent a very substantial amount of time and money in the discovery in this case, and in preparation and filing of motions and down through our motion for summary judgment. When the Court afforded Dr. Tyler the opportunity to file an amended complaint, in fact directed him to file an amended complaint, it's our opinion that he was given all the benefits that he is entitled to of dismissal without prejudice. He has specifically in two documents filed with the Court rejected the opportunity to file an amended complaint, and I think it must follow as a matter of course that this dismissal should be with prejudice so the matter can proceed to a final determination to

which the Defendants are entitled.

THE COURT: Anyone else care to address the Court, please? I think the Court is prepared to rule. The Court will deny the motion for attorney's fees, counsel. Without prejudice to reinstituting such request at a later juncture should that become necessary. However, at this time the reaction of the Court tends to take, the Court will deny the motion for attorney's fees. The Court will grant Defendants' several motions for entry of judgment, and the case as to each of the Defendants is dismissed with prejudice. The Court clearly explained to the Plaintiff at the February 17th, 1982 Pretrial conference that the pleadings in this matter were seriously deficient, taken in their individuality or collectively. And pursuant to CRS 1973, Section 13-16-102, the Court

directed Plaintiff to furnish a cost bond in the amount of $2000 per Defendant no later than the close of business on March 15th, 1982. The Court did instruct the Plaintiff at that time that pursuant to the provisions of the statute, failure to furnish the cost bond would potentially result in the dismissal of this case. The Court also has afforded the Plaintiff the opportunity of filing an amended complaint to delineate the respective charges with specificity as to each of the several defendants. This has not been done. The amended complaint has not been filed. And the plaintiff has failed to furnish the bond, and has unequivocally indicated to this Court that he does not intend to furnish the bond.

Further, we are concerned over the fact that at this hearing, even though each of the respective Defendants are represented by

counsel at an expense to each of the Defendants, the Plaintiff, through document designated "Waiver of Hearing" has elected not to be present at this hearing on the several motions going to whether this case should remain viable.

In the "Waiver of Hearing" the Plaintiff has unequivocally stated that he does not intend to file a bond, and he does not intend to appear at the hearing.

We are satisfied that every fair courtesy has been extended to the Plaintiff in an effort to assist him in the protection of his legal rights. However, the absence of the Plaintiff at this time indicates a question in the Court's mind as to whether the Plaintiff does sincerely intend to proceed with the litigation. We are satisfied that the information/warnings given to the Plaintiff as to what could occur should he not file

a bond or proceed with the other orders entered by the Court has resulted in inaction by the Plaintiff in regard to amended complaint or the cost bond.

The file on this case, and the record should so reflect, is extremely voluminous. Each of the respective defendants have had to retain counsel. They have attended several court hearings, filed responses and briefs. Discovery has gone forward in this case. Attorneys' fees have been incurred by each of the Defendants, and now it appears at a time when the matter can be put into proper focus, the Plaintiff elects not to be present.

The Plaintiff elects not to file an amended complaint. The plaintiff elects not to put up a cost bond, and unequivocally states he will not. Thus, we feel there are strong and substantial reasons why Defendants' motions

for entry of judgment should be granted, and why this case as to each Defendant should be dismissed with prejudice. The Court has dismissed without prejudice, however, the attorneys's fees for Defendants Evans and Fields, even though there are rather persuasive reasons why attorney's fees should be granted. However, in the exercise of this Court's discretion, in lieu of the fact that the Court is dismissing the case with prejudice, the Court will move in that direction and not award any attorney's fees. Mr. Cooper, may the Court impose on you, please, to prepare a very brief written order reflecting the action that the Court took, please, with chronology of dates and also with appropriate references to Defendants' Combined Exhibit A which has been admitted in evidence, the Waiver of

Hearing. I will ask you, please, to merely mail this to other defense counsel in the case, and within a given number of days if they do not respond , the matter should be sent to the Court. I will not ask all defense counsel to approve it, but they should have the opportunity. Would you assume that responsibility, please?

MR. COOPER: That would be agreeable, your Honor.

THE COURT: May this be accomplished within ten days, please?

MR. COOPER: Yes, it may.

THE COURT: Again, is Donald E. Tyler here? (Whereupon there was no response.)

THE COURT: The hour is twenty-five minutes of 3:00. The record should reflect that no one responds to the Court's call.

The Court will ask that this be filed with the Court within ten days. Anything

further to be brought before the Court, please? Court will be in recess. Thank you very much. This concludes the hearing.

(Whereupon, this hearing was then concluded at the hour of 2:35 o'clock p. m. this date.)

REPORTER'S CERTIFICATE

I, Suzanne M. Claar, Certified Shorthand Reporter and Official Reporter to this Court, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that thereafter my shorthand notes were reduced to typewritten form under my supervision, comprising the foregoing official transcript; further, that the foregoing official transcript is a full and accurate record of the proceedings in this matter on the date set forth.

Dated at Denver, Colorado, this 22nd day of April, 1982.

(signed) Suzanne M. Claar, RPR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action 81-F-1287

DONALD E. TYLER,	)	
	)	
Plaintiff,	)	
	)	WAIVER OF
vs.	)	
	)	HEARING
HARTFORD FIRE INSURANCE	)	
	)	
COMPANY, et al.,	)	
	)	
Defendants	)	

COMES NOW the plaintiff and waives his right to hearing on April 21, 1982, for matters noticed subject of that hearing. Plaintiff submits:

1. The plaintiff sustained multiple compression fractures of his spine and other injuries on July 17, 1981, from which he has not recovered.

2. The trip to Colorado for proceedings in this Court on February 17, 1982, caused increased pain, discomfort, and injury and

damage to his health, and unnecessarily cost him several hundred dollars.

3. The plaintiff has had no earned income since 1977 as a result of the wrongful acts of defendants.

4. The plaintiff has expended more than $55,000.00 and an extremely large amount of time in attempting to obtain justice and benefit of rule of law through use of courts in matters related to this lawsuit.

5. The plaintiff for health and financial reasons must make no unnecessary trips to Colorado.

6. On February 17, 1982, this Court ordered the plaintiff to submit a bond in the amount of $48,000.00 for purposes of defendants by March 15, 1982, or this case would be dismissed.

7. The plaintiff has not been notified of any

change in that order.

8. This Court and the Tenth Circuit Court of Appeals have refused to stay proceedings for time for the plaintiff to seek review of that order by the U.S. Supreme Court.

9. This Court has refused the plaintiff time to receive and review memoranda of defendants prior to the hearing scheduled.

10. The hearing scheduled April 21, 1982, is noticed to act on defendants' motions to dismiss because of failure of the plaintiff to submit the aforementioned bond.

11. The plaintiff does not intend to submit the aforemen tioned bond.

12. The plaintiff relied upon the 1st, 5th, and 7th Amendments of the U.S. Constitution and had no reason to believe that this Court could condition use of the United States District Court in this case upon the posting of a bond in the amount of $48,000.00.

13. The hearing scheduled April 21, 1982, is also noticed to act upon motions for attorneys fees by defendants Evans and Fields.

14. Plaintiff has submitted reasons why those motions should not be granted, and the motions and memoranda of the plaintiff directed to that issue are incorporated herein by this reference.

15. The plaintiff believes, and with good reason, that similar to the proceeding on February 17, 1982, that issues subject of the hearing scheduled April 21, 1982, have been pre-decided.

16. The plaintiff has submitted responses to motions of defendants which are incorporated herein by this reference.

17. The plaintiff believes that a trip to Colorado to attend the hearing scheduled April 21, 1982, will unnecessarily jeopardize

his health and unnecessarily cost him considerable time and money.

18. Therefore, the plaintiff waives his right to appear at the hearing on April 21, 1982.

19. The plaintiff does not waive right of hearing on matters not noticed to be subject of hearing April 21, 1982.

20. The plaintiff does not waive right to seek review in and by appropriate courts and other proceedings.

21. Plaintiff requests that the entire hearing and the entire proceedings on April 21, 1982, be recorded in entirety and verbatim.

DATED April 15, 1982 (filed 4/19/82)

By (signed) D.E. Tyler

Donald E. Tyler
Attorney for plaintiff, pro se
1092 S.W. 2nd Ave
Ontario, Oregon 97914
telephone (503)-889-5109

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

DONALD E. TYLER,	)	
	)	RESPONSE
Plaintiff,	)	
	)	TO MOTIONS
vs.	)	
	)	TO ENTER
HARTFORD FIRE INSURANCE	)	
	)	JUDGMENT
COMPANY, et al.,	)	
	)	
Defendants	)	

COMES NOW the plaintiff in compliance with the order of this Court issued March 26, 1982, and submits the following:

1. Defendants have submitted motions to enter judgment in their favor based upon: (a) the plaintiff has not submitted a cost bond in the amount of $48,000.00; and (b) the plaintiff has not amended his complaint.

2. The plaintiff intends to do neither.

3. The order of a cost bond in the amount of $48,000.00 was presented as following

C.R.S., 1973, 13-16-102.

4. There is no precedent in either the State of Colorado or the United States to require such a cost bond of a plaintiff to present a grievance and complaint of common law and federal statute transgression resulting in personal damage for resolution in their courts.

5. It is submitted that C.R.S., 1973, 13-16-101, 13-16-102, and 13-17-101 as applied in this case deprive the plaintiff without due process of law property and other valuable rights including but not limited to his right to seek justice in the courts of the United States without threats and intimidation guaranteed by the preamble, Art. III, sec. 2, Art. IV, sec. 2, the 1st, 5th, 7th and 14th Amendments of the U.S. Constitution, and of the Declaration of Independence as a

condition imposed upon the Statehood of Colorado in its Enabling Act to which the United States is bound.

6. It is submitted that the requirement of a $48,000.00 cost bond is contrary to the essential principles of the Declaration of Independence for which this nation was founded and the basic principles for which the people have fought and died.

7. The plaintiff has been and is continuing to be denied his fundamental basic rights of U.S. citizenship.

8. Such unprecedented closure of the federal courts infers that there is an extreme degree of bias and prejudice and prejudice against the plaintiff.

9. Prejudice to the intensity manifested against the plaintiff causes the plaintiff to reasonably conclude that the closure of the

federal courts to him is due to his minority religious affiliation.

10. The plaintiff's petition for writs of mandamus and/or prohibition, Tyler v. the U.S. Dist. Ct., No. 82-1296, U.S. Ct. of Appeals, 10th Circuit, is appended hereto as EXHIBIT A (except for its exhibits A through P which are already a part of this record) and incorporated herein.

11. The plaintiff sees no point in attempting to amend the complaint since he does not intend to post a cost bond.

12. The plaintiff therefore stands on his complaint, and submits that such is his right according to the Seventh Amendment of the U.S. Constitution, the common law, and the Declaration of Independence.

By (signed) D.E. Tyler

...

(mailed April 6, 1982, filed April 12, 1982)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

DONALD E. TYLER, Plaintiff, vs. HARTFORD FIRE INSURANCE CO., et al., Defendants	MOTION TO STRIKE MOTION FOR ATTORNEY FEES

COMES NOW the plaintiff in response to order of this Court issued March 26, 1982, and moves that this Court strike all motions for attorney fees in this matter presented by defendants Evans and Fields and any other such motions which may be submitted or have been submitted of which the plaintiff has not yet received.

AS GROUNDS the plaintiff submits:

1. This action is for serious significant damages against all defendants and each of them jointly and severally as plainly alleged.

2. This action is well substantiated in fact and in inferences as to conspiracies alleged. Discovery is incomplete, and stayed by order of Court.

3. The State statute upon which claim for attorney fees is based states in pertinent part:

> (C.R.S., 1973) 13-17-101 Attorney fees. (1) Subject to the provisions of subsections (2) and (3) of this section, in any suit involving money damages in any court of this state, the court shall award, ... in addition to any costs otherwise assessed reasonable attorney fees. (emphasis added)

4. Aforementioned statute is in derrogation of the common law, is penal in nature, and subject to strict interpretation.

5. Aforementioned statute clearly states in language understandable to any reasonably

literate person that it applies to use of courts of the state.

6. This court, the United States District Court for the District of Colorado, is not a court of the state of Colorado.

7. Motions for attorney fees are attempts under color and pretense of a state statute to deprive the plaintiff of property and other rights guaranteed by the U.S. Constitution without due process of law.

8. Motions for attorney fees are for purposes of threat and intimidation of the plaintiff for his use of federal courts and to obstruct and interfere with justice therein.

9. This action is based not only upon common law but also upon federal statutes.

10. This Court lacks jurisdiction to award attorney fees against the plaintiff in this action.

11. The plaintiff would not have instituted

this action if he had any reason to believe this Court could assess defendants' attorneys' fees against him and in derrogation of the common law and in violation of the 7th Amendment. Plaintiff demanded a jury trial.

12. As long as motions or any claims for attorney fees remain in this action they are a threat to the plaintiff's access to use of the federal court and prevent his use of the federal courts.

WHEREFORE, the plaintiff moves that this Court strike all motions and claims for attorney fees for defendants.

By (signed) D.E. Tyler

Attorney for plaintiff, pro se
1092 S.W. 2nd Ave
Ontario, Oregon 97914
(503)-889-5109

(Mailed 4/6/82, filed April 12, 1982)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-1287

DONALD E. TYLER,	)	
	)	
Plaintiff,	)	REPORTER'S
	)	
v.	)	TRANSCRIPT
	)	
HARTFORD FIRE INS.	)	PRETRIAL
	)	
CO., et al.,	)	CONFERENCE
	)	
Defendants	)	

Proceedings before th HONORABLE SHERMAN G. FINESILVER, U.S. District Judge, United States District Court for the District of Colorado, begining at 1:30 o'clock p.m., on the 17th of February, 1982, in Courtroom 201, United States Courthouse Denver, Colorado.

APPEARANCES

...

PROCEEDINGS

THE COURT: May we proceed in our case Number 81-F-1287, Donald E. Tyler v. Hartford Fire Insurance Company, please. May we proceed, please. Dr. Tyler, you are the Plaintiff; is that correct, please?

MR. TYLER: Yes, sir.

THE COURT: Let me call the names as I have them on my list. Let me know if you are here, and if I have your representation correct, please.

THE COURT: Mr. Roger F. Johnson and Robert Ruddy. You represent Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A Henderson, M.D. Joseph H. Poynter, M.D., Carl McLauthlin, M.D., Galen Marks, M.D., Robert Larsen, M.D., Thomas H. Mitchell, Grant Miller,

M. D.; is that correct?

MR. RUDDY: That's correct.

THE COURT: The record will so reflect. Mr. LaMora?

MR. LaMORA: Yes, your Honor.

THE COURT: You represent Defendants Warren & Sommer, Inc. and William Buckman; is that correct?

MR. La MORA: That's correct, your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Yes, your Honor.

THE COURT: Well, we have another Mr. Williams. Let me take them in my order first.

MR. WILLIAMS: Fine.

THE COURT: Mike Williams, Ken Siegel and Ellen Reath representing Defendant Peter Pryor; is that correct?

MR. WILLIAMS: That is correct. I am present, Mike Williams and Ellen Reath.

THE COURT: Steve Dawson and Paul Cooper representing Defendants Brighton Community Hospital, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Steiber; is that correct, please?

MR. COOPER: That's correct.

THE COURT: Robert Gehler, please?

MR. WILLIAMS: I am with Mr. Gehler's office, Patrick Williams, your Honor.

THE COURT : At the conclusion of the hearing, counsel, would you give Mrs. English your full name or your card, please.

MR. WILLIAMS: All right.

THE COURT: You represent Defendants Richard Evans and Terry Fields; is that correct, please?

MR. WILLIAMS: Yes.

THE COURT: Mr. Kennedy, you represent Defendant John Mott; is that correct, please?

MR. KENNEDY: That's correct.

THE COURT: And John Breit, please, you represent Defendant St. Paul Insurance Company?

MR. BREIT: That's correct, and with me is Susan Fisher of our office.

THE COURT: You might have her added with Mrs. English. Have I omitted anyone, ladies and gentlemen, please? In regard to counsel's name or in regard to any of the Defendants in this Case?

This matter is set for pretrial conference, and the Court has literally spent days, if not weeks, analyzing the complaint in this case and the pleadings, filings, and to say the least, the file is

extremely voluminous. The Court has it on the bench. And we are actually in the third large expanded file on this case. We are going to try to set up a blueprint to bring this case under what we consider to be judicial management, but with an attitude that the case will go forward according to the guidelines the Court sets rather than helter-skelter way without any direction. I will ask counsel to make notes. I don't intend to repeat anything. I am in the middle of a trial. We are in the seventh day of a trial. We have people from out of state, and this case has attracted the Court's attention; so likewise must this other case involving personal injuries attract the Court's attention.

Plaintiff Tyler has filed suit against 24 individual and corporate defendants on a

myriad of charges which appear to stem from the cancellation of Dr. Tyler's malpractice insurance and the circumstances surrounding his termination from Brighton Community Hospital. The complaint is lengthy. It is verbose. And at times Doctor, it's confusing. I can't track in every particular parts of that complaint.

The complaint seeks conpensatory and punitive damages in excess of 15 million dollars on theories ranging from antitrust, civil rights, contract, tort and conspiracy claims.

There are numerous pending motions in this case. For the sake of convenience, and for the Court to track what's involved in this case, it's almost like--to somewhat give semblance of order, the Court has taken the various complaints and drawn a chain of title as was existent prior to title

insurance to find out exactly what was involved in this lawsuit. And also putting piles of the complaint which were duplicated, and we added the responses to parts of the complaint. So in effect we had seven or eight different piles in regard to what was being charged and who the litigants were.

I am grouping the motions along these five directions: Number 1, the motions to stay; second, motions addressing the sufficiency of the complaint; three, the discovery motions; four, the motions for cost bond; five, motions for summary judgment. The motions for stay filed by Defendants Hartford Insurance Company, et al. on October 8, 1981, also a motion to stay filed by Defendants Warren & Sommers and William Buckman on October 19th, 1981.

We recognize the proposition that a

federal court can defer federal proceedings until the completion of a similar state court action to avoid waste and duplication. This general rule rests within the discretion of the Court. I will give you the name of the case, Will v. Calvert Fire Insurance Company, a United States Supreme Court case, 436 U.S. 655. We are advised that there are several lawsuits pending in the state court. We are not taking judicial notice of those cases. We don't know the full details. Therefore references or oblique references to those other cases, we have not studied those other cases. We understand those cases are progressing at certain levels of rapidity or slowness in the respective state courts. We are of the view that staying this proceeding will not assist in its efficient and economical resolution. It will only result in additional delay. The claims in this action, to the

extent they can be determined, primarily involve issues of federal law as we view it. We will not exercise pendent jurisdiction in this case, and because primarily those issues touch upon federal law, it's appropriate that we try to resolve it in federal court. Now it's the Court's experience when we stayed matters pending resolution in the state court, the case slips between the cracks and we lose track of it, and attorneys change, judges change, the parties change, the associations change, and it does not serve a purpose to resurrect cases that have been stayed. So this Court is of the view that we are not going to stay the case. Defendants' motion to stay these proceedings are hereby denied.

Secondly, motions addressing the sufficiency of the complaint, motions to dismiss for failure to state a claim were

filed by Defendants Warren & Sommers and Buckman on August 31; by Defendant Mott on August 31; filed by Defendant Brighton Community Hospital on August 31; by St. Paul Insurance on September 1st; by Defendant Hartford Insurance Co. on September 1st; by Defendants Pelletier, Koehly, Post and Stieber on September 1st; filed by Defendants Evans and Fields on October 9th. We are well aware of the standard to be used in evaluating the legal sufficiency of a complaint. We have reviewed again Rule 12(b)(6) of the Federal Rules of Civil Procedure, and the Court, accordingly, must construe the complaint in a light most favorable to the Plaintiff and accept the allegations as true. Wright and Miller, Civil Section 1357. It must appear to a certainty that Plaintiff is is entitled to no relief under any state of facts

which could be proven in support of the claim. Gas-A-Car v. American Petrofina, 484 F. 2d 1102, a Tenth Circuit case. The Court has spent a great deal of time reviewing Dr. Tyler's virtually unintelligible complaint in accordance with these standards.

Defendants' motions to dismiss for failure to state a claim are granted in part and denied in part and denied in part as follows: Paragraphs 40-53, 56-59 and 63-68 are dismissed.

MR. TYLER: Would you mind repeating those again?

THE COURT: Yes, again, please. Paragraphs 40-53, 56-59, and that is inclusive, 63-68 are dismissed.

These paragraphs apparently allege claims for slander and libel based on various publications, republications and ratification of publications that occurred in

1976 and 1977 and are barred by the Colorado one year statute of limitations, C.R.S. 1973, Section 13-80-102. There is no merit to Dr. Tyler's argument that the statute of limitations is not applicable because the libel and slander were means and acts committed pursuant to a conspiracy. We have considered that argument. We reject it. The complaint addressed the tort of conspiracy, not criminal conspiracy, but the tort of conspiracy is poorly defined. It is well established that tortious conspiracy is not actionable per se, but, instead, depends upon proof of an underlying cause of action. Perhaps the leading case still on that point is Morrison v. Goodspeed. To the extent that libel and slander form the basis for Dr. Tyler's tortious conspiracy claims, these allegations are dismissed. It's clear from the face of the complaint that the

statute of limitations bars all claims for libel based on publications occurring in 1976 or '77. Under these circumstances, the dismissal of these paragraphs is proper, Murphy v. Dyer, a case from this district on the district court level.

Similarly, Paragraph 103, alleging that various Defendants reduced hospital privileges of two physicians not parties to this lawsuit, is dismissed. Plaintiff has no standing to make claims on behalf of these individuals.

The motions to dismiss for failure to state a claim are denied in all other repsects without prejudice to being refiled at a later date.

The Court directs the following caveat to you, Dr. Tyler, however: The Court has serious questions regarding the sufficiency of many of the claims in this complaint, and

is sorely tempted to dismiss Defendants Pryor, Mott, Pelletier, Koehly, Post and Stieber, among others. We are not doing that at this time, but you must know what the study and the research analysis of this Court dictates.

The Court is particularly concerned about the sufficiency of the following claims: violations of 42 United States Code, Section 1983; Plaintiff has failed to allege facts which indicate that Defendants acted under color of law and failed to specifically allege the violation of any of his constitutional rights; violations of 42 United States Code, Sections 1985 or 1986 action. Griffin v. Breckenridge, a United States Supreme Court case.

It's the Court's recollection that no one cited the case of Ward v. St. Anthony's

Hospital to the Court, a Tenth Circuit case. That case is from this District. From this Court to the Tenth Circuit. It is somewhat informative on some of the analysis of the Court. Ward v. St. Anthony's Hospital.

Violations of 15 United States Code, Section 15, Section 4 of the Clayton Anti-Trust Act. The Court is concerned about the operation of the McCarren Ferguson Act, Section 1012, with respect to these claims. Even McCarren Ferguson does not bar these counts, however, Dr. Tyler must properly plead damage to his trade or business in accordance with the language of the statute, and this must be done with some specificity. Not a marble on the floor approach where many marbles are thrown on the floor hoping they are just going to fall into a pocket that suggests a theory of recovery.

The Court is not going to search and stretch and strain to see what those theories are. They have to be articulated in a way that is discernible. Unless these deficiencies are corrected, the Court will not hesitate to dismiss these claims also.

Motions to strike are filed by Defendants Warren & Sommers, William Buckman on August 31st; by Defendant Mott on August 31st, 1981; by Defendant Brighton Community Hospital on August 31st, 1981; by Defendant St. Paul Insurance Company on September 1st, 1981; by Defendant Hartford Fire Insurance on September 1st, 1981. The Defendants' motions to strike certain paragraphs of the complaint as redundant, immaterial, impertinent and insufficient pursuant to Rule 12(f) of the Federal Rules of Civil Procedure are granted in part and

denied in part as follows: Paragraph 55 referring to alleged libel by an unknnwn person is stricken; Paragraph 60 referring to letters sent by Plaintiff to Defendants which were not answered is stricken; Paragraph 75-79 referring to the circumstances surrounding the death of one William Waddell are stricken.

All other particulars subject to my later remarks, Defendants' respective motions to strike are denied.

The Court informs the Plaintiff again the Court is tempted, when an amended complaint is filed, if it is filed, to strike allegations which are impertinent, immaterial and argumentative. We will, however, give you the benefit of the doubt. In redrafting the amended complaint, Dr. Tyler, the Court cautions you that it will not be so

lenient the next time around. You are remaining in the Court on these claims on a shoestring. On legal sufficiency. As a licensed attorney, you are well aware of the requisites of proper pleading. If they are redundant and immaterial and insufficient allegations appearing in subsequent pleadings, the Court on its own motion will strike the same.

Now, the posturing the complaint created a situation of requiring the Court in an inordinate way of analyzing virtually every word because of the broad-based attack on the sufficiency and articulation or lack of articulation in the complaint. That is not necessary, should not be warranted or tolerated by a licensed attorney.

Item C. Motion to strike the complaint, the Defendants' motion to separately state claims, motions for more definite

statement and motions to dismiss for failure to aver time and place. They are filed by Defendants Warren & Sommers, William Buckman on August 31st, by Defendant Mott on that same date, St. Paul Insurance Company September 1st, 1981, by Defendant Hartford Fire Insurance on September 1st. We have tried to understand the nature of the claims in this lawsuit in an extensive expenditure of time. The 100 page complaint against 24 defendants is complex, at times it's unintelligible. The paragraphs make repeated allegations of a long series of wrongful acts related to other lawsuits and illegal conduct. In full sincerity, it is impossible to determine what these acts are, who the claims are made against and precisely what the claims are. As a result, the Defendants' motions to strike the

the complaint, motions to separately state claims and motions for a more definite statement are granted. Defendants' motions to dismiss for failure to aver time and place are denied.

Dr. Tyler, as a plaintiff, the Court directs you to seriously evaluate your posture as a plaintiff in this case and your claims in view of what the Court has mentioned today. You will have until the close of business on Wednesday, March 17th in which to file a simple, concise and intelligible complaint which corrects the numerous deficiencies mentioned by the Court today, if you so choose. We strongly encourage you to retain an attorney to review the matter with you and discuss the matter with this other attorney. In drafting the new complaint, keep in mind the

directives of Rule 8 of the Federal Rules of Civil Procedure that the complaint contain a short and plain statement of the claims showing that the pleader is entitled to relief and that each averment be simple, concise and direct. The complaint should not contain indiscernible references to unidentified parties, unnamed defendants, unrelated lawsuits which do not establish a claim for relief and have no nexus whatsoever in regard to this lawsuit. In addition, the Court directs the Plaintiff to exclude statements which have no legal basis or significance and to refrain from including any disparaging remarks about defendants or their counsel. The Court further directs that the amended complaint, if one is filed, shall separately number and state each claim against each defendant in accordance

with Rule 10(b). Specifically, you must set forth the time, place and manner of Defendants' acts which allegedly interfered with your practice of medicine and obstructed your access to the courts. You must also fully set forth the basis for any claims of breach of fiduciary duty or breach of contract. The allegations must be sufficient for Defendants to frame a responsive pleading.

We remind all counsel that, Plaintiff and counsel for all Defendants in this case, of the provisions of Rule 11 of the Federal Rules of Civil Procedure, which is frequently overlooked or ignored, but with increased interest is receiving considerable vitality not only by district judges, but by circuit judges, and one case the Supreme Court. I would suggest that all counsel here read Rule 11, and also the very stringent provisions

that are under consideration and discussion by the Advisory Committee headed by Professor Arthur Miller as its chief counsel. That rule provides that the signature of an attorney on a pleading indicates that he or she has read the pleading and to the best of his or her knowledge, information and belief there is ground to support it. All attorneys present are held to that standard and the sanctions that may be imposed. However, Dr. Tyler, you are not pro se and not unfamiliar with these rules. You are going to be held to the same standard as every other attorney who practices before the Court, notwithstanding you are pro se. I say this most kindly, most sincerely. That you must not permit your personal or emotional involvement in this case to obscure your judgment as an attorney or strike back by means of a complaint drawn

in the fashion that this complaint is drawn .

Again I say I do not know you. I have had other cases that I have dismissed that have been filed in this Court at your request with other counsel. [1] I know some of the Attorneys in this case. [2] I know few of the doctors involved. [3] I have little connection with the Brighton Community Hospital. [4] You could say I am starting on square one. And I am suggesting most sincerely that you speak to an attorney who is detached from the elements of this case; from what you perceive to be the injustice and determine if this is a justiciable type of case.

The Court intends to proceed with this

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1. Two related cases against counsel for Brighton Community Hospital and others were recently settled by that counsel in favor of the plaintiff.
2. The Court addressed some familiarly by nick-names on pages A-60 and A-61 . That is not without effect.
3. The relationship has not been further identified.
4. This is the only information of a connection.

case on an expeditious basis from this point on out. The amended complaint, if the Plaintiff chooses to file one, is due by the close of business on March 17th. The Defendants are directed to file unequivocal answers without prejudice to their right to file any motions attacking the sufficiency of the complaint or Rule 12 motions by the close of business on March 31st of 1982. In effect, the Court intends to keep this case in the posture of being at issue.[5] Again, I am directing that unequivocal answers be filed without prejudice to Rule 12 or other motions. These unequivocal answers should be filed by the close of business on the 31st of March. The Court will direct likewise

5. The only defendants who have filed answers are Fields and Evans. (Petitioner's note)

that motions, Rule 12 or other motions, shall be filed by that date also. The Court will allow counsel, however, should Rule 12 motions be filed, until the 9th of April in which to file briefs attacking the sufficiency of the complaint, if any, that are articulated on March 31st deadline. Dr. Tyler, a responsive brief shall be filed by April 21st, 1982 to any of these pretrial motions.

A status conference is set for Wednesday, May 12th, 1982 at 1:30, and the Court will endeavor to set up an agenda what we will go through at that time.

The Court very well will rule on the motions without oral argument. However, the Court will try and endeavor to give this case as much attention as we possibly can, commensurate with other cases. But the Court of necessity cannot continue to give

an inordinate amount of time to this case to the detriment of other cases that are of equal importance, and perhaps have a higher priority because they involve employment discrimination under federal statute, civil liberties or the various ramifications of the Speedy Trial Act.

All pending discovery motions are denied. After the amended complaint and answers have been filed, the case will be referred to a magistrate for all discovery proceedings, with the caveat that this should not impede the progress and with a request of the magistrate to seek to expedite the discovery disputes. However, after the substantive motions are filed, Rule 12 or other motions, thereafter this Court or the magistrate will not consider any discovery or any other disputes of scheduling or

otherwise unless and until there is a Rule 5(g) certificate filed, or its equivalent, in all matters. 5(g) is part of out local rules. If counsel are not familiar with it, I suggest that you may speak to the clerk at the counter downstairs, and obtain a copy of our local rules. That applies not only to discovery matters, but other matters also dealing with timetables and so forth. The Court does not perceive that judicial intervention is necessary at every stage of this case.

The Rules of Civil Procedure and the spirit and tenor of Rule 1 of the Federal Rules of Civil Procedure outline the philosophy of minimizing the cost of expense, encouraging cooperation without judicial intervention. This case has extracted considerable judicial intervention from the time it was filed to this time. That is to be expected. But it will not be encouraged

in the future, and I daresay it's not going to be tolerated, so counsel are going to have to conduct this in an orderly professional way, all counsel, please.

Discovery in this case is to be completed by May 28th. I will ask counsel to cooperate in that regard, and I did not say that that commences discovery. Should the Court find any abuse of discovery dealing with depositions or interrogatories, requests for admissions, requests for authenticity, the Court will impose sanctions. Counsel are well aware of sanctions that could be imposed under Rule 37, and also that are articulated in the case of State of Ohio v. Crofters that emanated from this Court, 75 Federal Rules Decision 12, and also 570 F.2d 1370.

The fourth item that I would care to address myself to is motions for cost bond. Motions for cost bond have been filed by

defendants Hartford Insurance Company and others on September 1st, by Defendant Warren & Sommers and William Buckman, September 11th, by Defendant Brighton Community Hospital on September 18th, by Defendant Mott October 2nd, by Defendant St. Paul Insurance Companies on October 9th.

The Court has wide discretion to require the Plaintiff to post a security for costs. Federal courts generally follow the forum of state practices. I generally follow what the tradition is or somewhat what the blueprint is under the state statute according to 1973 C.R.S. 13-16-102, it is the duty of court to provide a cost bond if the plaintiff is a non-resident, and the Court is satisfied that he or she may not be able to pay the cost of the suit. In this case Dr. Tyler is a resident of Oregon, and there are threads throughout the various pleadings in

this case as to whether Dr. Tyler is gainfully employed. The complex nature of this suit, the numerous filings, the exigent circumstances with discovery, [6] Plaintiff's demand for excessive damages [7] make a cost bond both necessary and appropriate.

Plaintiff is directed to furnish a cost bond in this action in the amount of $2,000.00 per defendant. Such bond shall be posted no later than the close of business on March 15th 1982. Failure to furnish a bond with the clerk of the court at that time will result in dismissal of the case. Again March 15th.

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6. On page A-85, the Court denied virtually all discovery of most defendants by the plaintiff.

7. The Court does not reveal what demand he will allow without a cost bond. He is obviously biased since he has no evidence upon which to base an opinion of the amount of damage other than the sworn to complaint. He should have appropriately disqualified himself prior to issuing this order.

Item IV, motion for summary judgment filed by Defendants Warren & Sommer and Buckman on January 19, 1982, by Defendant Evans on February 4th, 1982, by Defendant Field on February 4, 1982, these several motions for summary judgment are summarily denied without prejudice to refile at a later date.

This concludes the hearing. The Court will be in recess for five minutes.

(Whereupon, this hearing was then concluded at the hour of 2:10 o'clock p. m.

REPORTER'S CERTIFICATE

... the foregoing official transcript is a full and accurate record of the proceedings in this matter on the date set forth.

Dated at Denver, Colorado, this 18th day of February, 1982.

(signed) Suzanne M. Claar, (RPR)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action 81-F-1287

DONALD E. TYLER,

Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY, COLORADO MEDICAL SOCIETY, WARREN & SOMMER, INC., INSTITUTE FOR CORRECTIVE PRACTICE, HERBERT ROTHENBERG, M.D., WILFRED STEDMAN, M.D., JAMES A. HENDERSON, M.D., JOSEPH H. POYNTER, M.D., CARL McLAUTHLIN, M.D., GALEN MARKS, M.D., ROBERT LARSEN, M.D., WILLIAM BUCKMAN, THOMAS H. MITCHELL, PETER PRYOR, CHARLOTTE PELLETIER, JEAN KOEHLY, BERNADENE POST, GWEN STIEBER, GRANT MILLER, M.D., RICHARD

COMPLAINT

EVANS, TERRY FIELDS, JOHN MOTT, ST. PAUL INSURANCE COMPANIES, AND BRIGHTON COMMUNITY HOSPITAL ASSOCIATION,

Defendants.

The plaintiff complains of the defendants and each of them, jointly and severally, and for cause of action alleges:

JURISDICTION

1. Jurisdiction is based upon diversity of citizenship and the amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. The plaintiff is a citizen of the State of Oregon and the defendants are all citizens of other states; all individuals named as defendants are citizens of Colorado, and none of the defendant corporations or associations are incorporated in or have their principal offices in the State of Oregon. Jurisdiction is also based upon

federal issues of significance including but not limited to Title 15 of the United States Code and Title 42 §§ 1983, 1985, 1986, 1988, 1992, and Ch. 13, § 241 U.S.C. S.

FIRST CLAIM FOR RELIEF:

COMMON LAW REMEDY FOR UNLAWFUL AND WRONGFUL INTENTIONAL INTERFERENCE WITH BUSINESS BY INDIVIDUALS AND PURSUANT TO CONSPIRACY

2. At all pertinent times defendants Terry Fields and Richard Evans and Larry Clay were officers in the Police Department of Brighton, Colorado, and were acting under color of that office and laws of the State of Colorado.

3. At all times pertinent defendants Hartford Fire Insurance Company, Colorado Medical Society (hereinafter referred to as CMS), Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D.,

James A. Henderson, M.D., Joseph H. Poynter, M.D., and Carl McLauthlin, M.D., were acting under open and declared color of Statutes of the State of Colorado including C.R.S., 1973, amended, 10-4-109, 13-21-110, 13-90-107, 12-43.5-101, and 12-43.5-102.

4. At times pertinent herein defendant Brighton Community Hospital Association (hereinafter referred to as BCH).

5. At times pertinent herein Francis Fry was an employee and agent of defendant Hartford Fire Insurance Company (hereinafter referred to as Hartford).

6. At times pertinent herein Francis Fry was acting within the scope of his employment and agency for defendant Hartford.

7. All acts alleged herein committed by Francis Fry have been approved of and ratified by defendant Hartford.

8. At all times mentioned herein defendant Hartford was acting as the agent for defendants Marks and Larsen and for their benefit.

9. At times mentioned herein Robert Brittain was acting as an employee and agent of defendant Institute for Corrective Practice (hereinafter referred to as ICP) and was acting within the scope of that employment.

10. All acts of Robert Brittain herein alleged have been for the benefit of defendant ICP and have been approved and ratified by ICP.

11. At times mentioned herein Robert Brittain was employed by defendant CMS and was acting within the scope of that employment.

12. At times mentioned herein defendant ICP was employed by defendant CMS and was acting within the scope of that employment.

13. All acts alleged herein as committed by Robert Brittain and by ICP were done pursuant to employment by defendant CMS as agents for CMS and allsuch acts have been approved of and ratified by CMS.

14. At all times mentioned herein and pertinent defendant Thomas H. Mitchell was acting as an employee and agent for defendant Hartford and was acting within the scope of that employment and agency.

15. All acts herein alleged committed by defendant Mitchell have been approved of and ratified by defendant Hartford.

16. At all times mentioned herein defendant William Buckman was acting as an employee and agent for defendant Warren & Sommer, Inc., and was acting within the scope of that employment and agency.

17. All acts herein alleged committed by defendant Buckman have been approved of and

ratified by defendant W.rren & Scmmer, Inc..

18. At all times mentioned herein defendant Peter Pryor was acting as an agent for Hartford.

19. All acts herein alleged committed by defendant Peter Pryor were within the scope of his agency for Hartford and were approved and ratified by Hartford.

20. At all times mentioned herein Robert Brittain and defendants Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., and Carl McLauthlin, M.D., were acting as agents of defendant CMS and were acting within the scope of that agency.

21. All acts herein alleged committed by Robert Brittain, and by defendants Rothenberg, Stedman, Henderson, Poynter, and McLauthlin were approved and ratified by defendant CMS.

22. At all times mentioned herein defendant Warren & Sommer, Inc., was an agent for defendant Hartford and was acting within the scope of that agency.

23. All acts herein alleged committed by Warren & Sommer, Inc., were approved and ratified by defendant Hartford.

24. At all times mentioned herein until January 1, 1981, the plaintiff was licensed by the State of Colorado to practice medicine and surgery therein.

25. At all times mentioned herein until December 10, 1977, the plaintiff practiced medicine and surgery in Brighton, Colorado.

26. The defendants and each of them, jointly and severally, have committed and continue to commit numerous acts including but not limited to those noticed herein to intentionally unlawfully interfere with and obstruct the lawful practice of medicine and surgery of the

plaintiff and pursuant to conspiracy with each other and with other persons known and unknown to the plaintiff.

27. The numerous acts by the defendants, jointly together and by each of them, including but not limited to those herein noticed have been outrageous and have been and continue to be committed by the defendants and each of them pursuant to conspiracy to intentionally cause the plaintiff worries, anxieties, and severe emotional distress and to thereby and in other ways including but not limited to those herein described to intentionally wrongfully interfere with and obstruct the plaintiff's access to and use of courts and his prosecution of lawsuits for damages and designed to restore his medical practice, and to retaliate for the plaintiff's rightfully properly seeking relief and redress in courts to restore his medical practice and

ability to practice medicine, and to thereby and in other ways wrongfully interfere with his practice of medicine and surgery free from such wrongful and unlawful interference.

28. At all times mentioned herein a contract and agreement was in effect between Hartford and defendant CMS to the effect that physicians who were or who are members of CMS can be insured for professional liability by Hartford with premiums subject to substantial decreases by refunds depending upon Colorado claims.

29. Copy of aforementioned agreement between Hartford and CMS is appended hereto as EXHIBIT A.

30. In June, 1975, and in September, 1975, and at other times the plaintiff initiated lawsuits against Galen Marks, M.D., Robert Larsen, M.D., Willaim Waddell, M.D., Bernadene Post, Jean Koehly, Gwen Stieber, BCHA, and

others alleging various illegal acts pursuant to conspiracy.

31. Complaint of one of aforementioned lawsuits (Civil Action 28036) is incorporated and appended hereto as EXHIBIT B(omitting its exhibits A and B).

32. At all times mentioned herein, an insurance agreement was in effect between St. Paul Insurance Companies, the insurer, and BCHA in an amount of $1,000,000.00 for liability subject to aforementioned lawsuits and subject to acts of defendants Gwen Stieber, Bernadene Post, Jean Koehly, BCHA, Marks, Larsen and others; and St. Paul Insurance Company insured David Grayson subject to claims by Tyler in Civil Action 29014, Dist. Ct. for Adams County.

33. Each and every defendant herein at the time of acts he, she, or it committed as alleged herein had knowledge of the

aforementioned lawsuits, the complaints and the acts therein alleged.

34. Each and every defendant herein at the time of acts alleged committed by each of them jointly, noticed herein, knew that the facts alleged in the aforementioned complaints were as alleged.

35. Each and every defendant herein has approved and continues to approve in outrageous conduct the conspiracies and acts as alleged of defendants in aforementioned complaints, including libels, slanders, false statements, falsification of documents, deliberately falsified hospital records, aiding and abetting illegal practice of medicine by unlicensed persons, coercion of the plaintiff to accept patients in situations in which it would be improper practice of medicine for him to do such, scheduling of professional disciplinary action hearings of the plaintiff

without charges and without notice of specific charges prior to scheduled times of hearings, deceit and fraud, reduction of various physicians' privileges to practice medicine in a public community hospital without due process of law and in breach of hospital by laws, conspiracy to damage and resulting damage to the plaintiff's practice of medicine, and other outrageous conduct and gross breaches in the established ethics of the medical profession.

36. At all times mentioned herein defendant Hartford insured defendants Marks and Larsen, subject to aforementioned CMS-Hartford contract (Exhibit A), each with policy limits in the amount of one million dollars ($1,000,000.00) and such insurance was and is subject to claims by the plaintiff in aforementioned lawsuits in which Marks and Larsen are defendants.

37. At all times mentioned herein until December 11, 1977, the plaintiff was a member of CMS and was insured by Hartford subject of aforementioned CMS-Hartford contract.

38. At all times mentioned herein defendants Hartford, CMS, Warren & Sommer, ICP, Buckman, Mitchell, Rothenberg, Stedman, Henderson, McLauthlin, Miler, Poynter, Marks, Larsen, and all members of CMS had and continue to have substantial financial interests in aforementioned contract between Hartford and CMS and in the aforementioned lawsuits in which Larsen and Marks are defendants, and the defendants herein aforementioned have acted and continue to act unlawfully and against the plaintiff as herein alleged for those and other wrongful financial reasons and for their own financial benefit, and against public interests,

in breach of fiduciary duties and in breach of contract of rules governing CMS by Constitution, by-laws, or by other name.

39. Acts committed by the defendants herein alleged as individuals and pursuant to aforementioned conspiracy include but are not limited to those cited in the following paragraphs.

40. On or about June 15, 1976, in offices of defendant Hartford at 800 Grant St., Denver, Colorado, Francis Fry, acting for Hartford, published to Robert Brittain, M.D., who was employed by CMS, the entire files of Hartford dealing with all cases in which the plaintiff herein was plaintiff including but not limited to those aforementioned and included the complaint which is appended hereto as EXHIBIT B .

41. Aforementioned publications by Fry and Hartford included many written documents

which were false and defamatory and in other ways damaging to the plaintiff and in his practice of medicine including the false documents appended as exhibits in EXHIBIT B.

42. None of the aforementioned documents had been introduced in trial at times mentioned and pertinent herein, and there was no privilege to republish them by the defendants herein, and they invaded the privacy of the plaintiff by such republications and in other ways.

43. The publications aforementioned were not to express an opinion of the contents of the documents, but the publications were for wrongful purposes of conspiracy as herein alleged.

44. Aforementioned publications included medical records of patinets cared for by the plaintiff without such persons' consent, which were unlawfully in the possession of Hartford which along with nurse's comments concerning

patients were supplied to it in conspiracy by BCHA and for its benefit and for the benefit of its insurer, St. Paul Insurance Companies, and ratified by BCHA and St. Paul Insurance Companies, in breach of medical ethics, hospital rules and regulations, and in breach of contracts between patients and physicians on the medical staff of BCH including the plaintiff and between him and BCH, and such ratification included all publications and republications herein alleged and pursuant to conspiracy.

45. Aforementioned publications included evaluations of the lawsuits by attorneys for Marks and Larsen including John Mott, and Zarlengo, Mott, and Zarlengo, and revealed to the defendants herein that the attorneys knew and revealed therein that there was no legitimate defense for Marks and Larsen, that they would depend upon creating

prejudices, and that the illegal help of the defendants herein was needed.

46. Aforementioned publications by Hartford to Brittain and by Brittain to other persons as alleged herein was established practice, and was approved beforehand by defendant John Mott and Zarlengo, Mott, and Zarlengo, and were for their benefit, and they ratified such publications and all the unlawful acts resulting from and associated with those publications.

47. Aforementioned documents revealed to the defendants herein that the defendants in the aforementioned lawsuits, including Marks and Larsen and attorneys Mott, and Zarlengo, Mott, and Zarlengo, knew of the falseness of the documents published by Hartford to Brittain and by Brittain to other persons as herein alleged.

48. Aforementioned documents published by defendants herein have been refused the

plaintiff for examination, and plaintiff requests permission to amend the complaint and add parties as necessary for complete justice after aforementioned documents are examined by the plaintiff.

49. On or about July, 1976, and at other times known to the defendants, in Brighton Community Hospital, Brighton, Colorado, and at the office of Robert Brittain, 3501 S. Corona, Englewood, Colorado, and at other times and places known to the defendants, defendants Marks and Larsen approved and ratified publications aforementioned to Brittain by Hartford and by Brittain to others and all acts herein alleged which were all done in their behalf and for their benefit.

50. In September and November, 1976, and at other times known to the defendants, and at places known to them, Brittain orally republished the contents of the aforementioned

false documents to defendants Stedman, Rothenberg, and Henderson who with Brittain were members of the Risk Management Committee of the CMS.

51. In April, 1977, defendant Peter Pryor, acting for Hartford, republished documents aforementioned including but not limited to a document, copy of which is appended hereto as EXHIBIT C, in writing to defendants Stedman, Rothenberg, and Henderson by mailing them and other documents damaging to the plaintiff from his office at 801 E. 17th Avenue, Denver, Colorado, addressed to aforementioned defendants at places known to them.

52. Aforementioned document, Exhibit C, is libelous on its face of the plaintiff and is false and is damaging to the plaintiff concerning his profession.

53. Aforementioned document concerns a private matter, not of public interest.

54. Aforementioned publications by defendant Pryor and Hartford were not to express an opinion of the false, libelous contents of aforementioned documents, and the purpose of such republication was without color of legitimacy and was for purposes of the conspiracy alleged herein, and to obstruct and interfere with the lawful taking of depositions of the defendants Stedman, Rothenberg, and Henderson by the plaintiff in discovery proceedings in aforementioned lawsuits, and to reinforce the publications by Brittain aforementioned and to maintain a continuing process of insult and damage to the plaintiff and in his pracitce of medicine.

55. Aforementioned document, Exhibit C, was illegally in the possession of Pryor, due to libel by some person whose identity is

undetermined.

56. Aforementioned publications in writing and orally by Fry for Hartford, Brittain for CMS, and Pryor for Hartford were false and on their face stated that the plaintiff acted and spoke unprofessionally in conduct of his practice of medicine and surgery and those publications were so interpreted by persons to whom they were published as herein alleged and which persons heard and read them.

57. The aforementioned publications are false, and Hartford, Brittain, and Pryor knew of their falseness and published them in reckless disregard of whther they were true or false.

58. Aforementioned publications by Hartford and Brittain implied and insinuated that the plaintiff had been accused of substandard conduct in his practice of medicine, that he had been properly notified of a hearing

concerning his practice of medicine, and that he improperly refused to attend such hearing, and they were read and heard and so interpreted by the persons to whom they were published as herein alleged; and these and other implications, insinuations, and direct statements in aforementioned documents and publications damaging to the plaintiff in his profession were false and Fry, Hartford, and Brittain knew that they were all false at the times they republished them and they published them in reckless disregard of whether they were true or false.

59. As a proximate result of the foregoing, and providing pretext, and pursuant to conspiracy, defendants Hartford, CMS, Warren & Sommer, ICP, Rothenberg, Stedman, Henderson, McLauthlin, Buckman, Mitchell, Poynter, and others did cause oppressive, abusive, insulting, threatening, false,

deceitful letters to be written and mailed to the plaintiff, at times and places as indicated thereon or known by defendants and received by the plaintiff at 1790 E. Bridge St., Brighton, Colorado, copies of which are incorporated herein and appended hereto as EXHIBITS D, E, F, G, H, I, J.

60. Letters and by copies, copy appended hereto as EXHIBIT K, were mailed certified by the plaintiff on September 12, 1977, from 1790 E. Bridge St., Brighton, Colorado, to persons stated thereon, were received by each of them September 13, and 14, 1977, with return acknolwdgements of receipt, and were unanswered by anyone.

61. The Risk Management Committee of the CMS had no expertise or jurisdiction to determine the quality of the records of patients of the plaintiff as to their legal value to the plaintiff herein and to his insurer

Hartford and against the interest of the patients in the hypothetical event the plaintiff herein were sued for malpractice, the deceitful reason claimed by defendants they sought permission to examine such records referred to in aforementioned letters, Exhibits D through J.

62. Aforementioned letters, Exhibits D through J, are false and deceitful in various ways in that defendants sought permission to examine records of patients cared for by the plaintiff not for the purposes stated in those letters and in their explanatory statements, nor limited to the stated purpose of examining emergency room records, nor limited to examination by the Risk Management Committee; and the defendants sought permission to examine those records for the the wrongful purposes of conspiracy as herein alleged.

63. As a proximate result of the foregoing, and pursuant to conspiracy, defendants Stedman, Rothenberg and Henderson and Brittain acting as the Risk Management Committee of the CMS on or about March 21, 1977, at a place known to the defendants but unknown to the plaintiff, acted without jurisdiction, without notice of hearing, and without hearing, and decided and determined anc caused recommendation be made to various entities and persons that the professional liability insurance of the plaintiff not be renewed.

64. Aforementioned recommendation was published by the persons aforementioned in paragraph 63 in writing to defendants Hartford and Warren & Sommer, Inc., on or about March 21, 1977.

65. Aforementioned recommendation was false in that it stated or implied and in

writing that the plaintiff practiced medicine and surgery in such a manner as to make him an increased risk to be successfully sued for malpractice.

66. Aforementioned recommendation was false in that it stated or implied that the plaintiff had not cooperated with the lawful purposes of the committee.

67. Aforementioned publication by the Risk Management Committee has not been examined by the plaintiff and its exact contents are unknown to him in spite of all due diligence on his part and because of the surreptitious, cablistic nature of the conspiracy and the protection from discovery afforded such conspiracy by the color of law under which it operated and operates. Plaintiff requests permission to incorporate such document herein and together with any innuendo as required or necessary, after such document

is examined pursuant to discovery proceedings.

68. Aforementioned document is libelous on its face and by innuendo of the plaintiff and damaging to his professional practice of medicine, and such publication caused and causes special, monetary damage to the plaintiff as a proximate result as hereinafter alleged more fully.

69. The Risk Management Committee did not determine that the plaintiff was an insurance risk greater than average, but made the aforementioned recommendation under pretext of finding that the plaintiff improperly did not cooperate with the committee, and they made such finding and recommendation without charges, notice of hearing, or hearing.

70. As a proximate result of the foregoing, and pursuant to conspiracy herein alleged, oppressive, coercive, unethical conditions precedent were added to any renewal of

plaintiff's professional liability insurance by Hartford to include permission for Hartford to examine medical records of patients cared for by the plaintiff, picked by them at random.

71. As a proximate result of the foregoing wrongful acts, aforementioned insurance of the plaintiff was not renewed and expired on or about December 11, 1977, and other damages resulted as hereinafter alleged.

72. The foregoing acts were for the benefit of defendant St. Paul Insurance Companies which approved and ratified them.

73. In the fall of 1975, and particularly during the first week of January, 1976, the plaintiff was actively noticing to take depositions and was taking depositions of person associated with Brighton Community Hospital including defendants in lawsuits aforementioned in which defendants Marks, Larsen, and William Waddell, M.D., were defendants and

alleged to be co-conspirators.

74. Aforementioned allegations were well-founded in fact; on March 6, 1980, a jury returned findings and verdict to the effect that Marks, Larsen, and others had conspired and damaged the plaintiff, subject to order for new trial as to amount of damages. EXHIBITS L, M.

75. Prior to March, 1977, it was reported to the plaintiff that on January 12, 1976, William Waddell, M.D., was found dead in his garage, the doors of the garage were found closed, the motor of the vehicle was running, the vehicle was backed into the garage, his body was near the rear of the vehicle, and no injuries were found. Examination of his blood was reported to reveal carbon monoxide at a level capable of having caused his death.

76. Aforementioned reports reasonably caused the plaintiff to believe and continue to believe that William Waddell died as a result

of carbon monoxide poisoning caused by suicide due to his complicity in aforementioned conspiracy and to escape consequences, and that reports to the contrary were pursuant to conspiracy to suppress those truths and evidence.

77. At all times pertinent mentioned herein, defendants Marks, Larsen, Charlotte Pelletier, Bernadene Post, Jean Koehly, and Gwen Stieber had knowledge of aforementioned details of Waddell's death and the plaintiff's reasonable belief that the cause was suicide because of guilt and to avoid consequences of lawsuits.

78. The plaintiff grieved that William Waddell died and particularly in such terribly painful circumstances to himself and to his family.

79. At all times mentioned herein, defendants aforementioned in paragraph 77 knew that the plaintiff was and is sensitive of feelings of

other persons and that the plaintiff and Waddell had had a good working and social relationship prior to Waddell's involvement in conspiracy with Marks and Larsen.

80. At all times mentioned herein all defendants herein knew that the plaintiff was being subjected to severe stress and was and is very susceptible to suffer emotional distress as a result of outrageous conduct designed to cause him emotional distress as herein alleged.

81. In 1976, 1977, and 1978, and at other times, for discovery and trial of the aforementioned lawsuits, the plaintff caused to be served subpoenae and his personal checks for witness and mileage fees upon many persons including but not limited to defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber.

82. At various times from and including

March, 1977, through April, 1978, defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber endorsed aforementioned personal checks of the plaintiff and presented them for payment in Brighton, Colorado, with directions written thereon indicating that the payment of such checks was to be for a memorial fund for aforementioned William Waddell.

83. Defendants aforementioned in paragraph 81, and each of them, at all times herein pertinent knew that the aforementioned checks, after such endorsement and presentation for payment, would be reutrned to the plaintiff, and they were accordingly returned to the plaintiff who read the endorsements thereon as the checks were returned in 1977 and 1978 in Brighton, Colorado.

84. Aforementioned acts by defendants Marks, Larsen, Pelletier, Post, Koehly, and Stieber were outrageous and done intentionally to

cause the plaintiff to suffer severe emotional distress related to Waddell's death, and by adding to, reinforcing, reaffirming, and flaunting their wrongful acts alleged in EXHIBIT B, and they proximately caused damage as hereinafter alleged.

85. On the evening of July 1, 1977, in the District Court in and for Adams County, State of Colorado, a jury returned a verdict in favor of the defendants in Tyler v. Gaylor, et al., and consolidated Tyler v. Gaylor's Food Store, Inc., et al., which cases were related to aforementioned lawsuit against Marks, Larsen, and others, complaint EXHIBIT B.

86. Immediately following return of aforementioned verdict, on the same evening, a party was in progress in the Platte Valley Clinic Building, 1929 E. Egbert St., Brighton, Colorado, attended by persons associated with BCH and the Platte Valley Clinic including

defendants herein.

87. Prior to July 1, 1977, and in BCH, Grant Miller, M.D., conspired with defendants herein and again and continuing on July 1, 1977, at 1929 E. Egbert St., Brighton, Colorado, he continued to so conspire and acted pursuant to conspiracies as alleged in paragraphs 26 and 27.

88. On July 1, 1977, at 1929 E. Egbert St., Brighton, Colorado, defendant Miller,pursuant to conspiracies aforementioned conspired with other defendants aforementioned and with other persons including but not limited to Richard Evans, Larry Clay, and Terry Fields to utilize their positions as police officers to harass, annoy, terrorize, abuse, humiliate, insult, and intimidate the plaintiff that evening and at his place of residence, and to intentionally cause him severe emotional distress.

89. As a proximate result of the foregoing, and pursuant to conspiracies aforementioned Officer Terry Fields, in police uniform and bearing a gun, came to the apartment of the plaintiff at 90 South 18th Avenue, Brighton, Colorado, in which he and his 84 year-old mother were present, and demanded to interrogate the plaintiff.

90. Aforementioned defendant Fields was agitated, over-bearing, oppressive,insulting, demanding, and abusive to the plaintiff and in the presence of the mother of the plaintiff in the apartment residence of the plaintiff.

91. As a pretext for such invasion and abuse, Officer Fields would only state in response to repeated direct questions that someone whom he refused to identify had reported that the plaintiff "was seen leaving the court house carrying a gun," which is false in entirety.

92. Aforementioned acts by defendants Miller, Fields, and Evans were without probable cause or reason to believe that any crime had been committed or was about to be committed, or other legitimate reason.

93. At aforementioned times and places on July 1, 1977, the defendants Miller, Fields, and Evans and others with whom they conspired knew at the time they conspired that the plaintiff was extemely disappointed and emotionally upset and would be very susceptible to emotional distress and other damage herein alleged which they intentionally proximately caused by aforementioned outrageous acts and conduct.

94. On May 11, 1976, Betty Berger, an employee of BCHA, was deposed by the plaintiff in Civil Action No. 28036, complaint EXHIBIT B.

95. During aforementioned deposition Betty

Berger testified favorably for the plaintiff and unfavorably as to the defendants and particularly concerning Gwen Stieber and BCHA who were defendants in that action and herein.

96. Subsequent to May 11, 1976, at various times known to defendants, in BCH, Stephen D. Dawson, pursuant to conspiracies aforementioned, representing and acting as agent for defendants BCHA, Gwen Stieber, Paul Renner, and St. Paul Insurance Companies, with apparent authority to act for Stieber and BCHA, knowing the plaintiff would learn of such acts, harassed, annoyed, intimidated and proximately caused Betty Berger to feel threatened with employment insecurity unless she changed her testimony to favor the defendants, which acts and personal feelings Betty Berger communicated contemporaneously to the plaintiff, and the plaintiff was thereby

proximately damaged as herein alleged.

97. Betty Berger refused to change her truthful testimony to make it favorable to the defendants.

98. Betty Berger reported the foregoing acts of Stephen Dawson to defendant Charlotte Pelletier, adminstrator of BCH, in BCH at sometime between May 11, 1976, and February, 1977, which time is known exactly by defendants.

99. In deposition of Donald E. Tyler, plaintiff herein, in Civil Action 28036, on February 4, 1977, in 3131 Security Life Building, Denver, Colorado, it was determined by Stephen Dawson pursuant to conspiracy that for certain his aforementioned conduct was known by the plaintiff, and such conduct was made known to counsel and parties in that action.

100. All parties in Civil Action 28036 and their legal counsel, including Marks, Larsen, Mott,

BCHA, Stieber, V. James Robison and Montgomery Little Young Campbell & McGrew, P.C., and insurers, defendants Hartford and St. Paul Insurance Companies approved and ratified aforementioned acts of Dawson, all of which were done in their behalf and for their benefit.

101. As a proximate result of the foregoing and pursuant to conspiracies aforementioned, knowing the plaintiff would learn of their acts, to further wrongfully cause Betty Berger to suffer anxieties, and to set an example for others associated with BCH who might exercise freedom of speech and thereby testify truthfully in favor of plaintiff Tyler in lawsuits, in approximately July or August, 1977, the exact time of which is known to defendants, defendants Pelletier and BCHA acting for the benefit of defendants Stieber and St . Paul Insurance and other defendants herein, and

with their approval and ratification, reduced the working hours of Betty Berger and reduced her pay so that she was forced to resign from employment at BCH, a public community hospital, and seek employment elsewhere.

102. Betty Berger related the foregoing to the plaintiff contemporaneously and the plaintiff was proximately caused damage alleged herein.

103. Because of support expressed for the plaintiff Tyler related to aforementioned then pending lawsuits, to suppress their testifying truthfully for plaintiff Tyler, to set examples for others, and pursuant to conspiracies aforementioned in paragraphs 26 and 27 knowing the plaintiff would learn of their outrageous acts, Pelletier and BCHA and other defendants herein pursuant to conspiracy, reduced the privileges of Buel Hutchinson, M.D., to work in BCH on or about August 16, 1976,

without due process of law and in breach of by laws of the medical staff and so insulted and humiliated him as to force him to resign from the medical staff of BCH, and defendant Larsen, acting under color of office of president of the medical staff of BCH and pursuant to conspiracies herein alleged, without jurisdiction and in breach of bylaws, reduced the privileges of Merrill Shidler, M. D., to practice medicine in BCH on September 5, 1975, and harassed and insulted him and forced him to leave Colorado to practice medicine in another state; and pursuant to aforementioned conspiracies the plaintiff contemporaneously learned of such outrageous acts directed against his friends and supporters to cause him emotional distress and he was proximately damaged as herein alleged.

104. As a proximate result of the foregoing acts of defendants, and each and all of them, the plaintiff was damaged in his medical practice, forced to quit practicing medicine in 1977, forced to sell his medical office in February, 1978, forced to leave Colorado in April, 1978, and such damage continues and prevents him from practicing medicine and surgery.

105. Af orementioned acts of defendants committed pursuant to conspiracy and under color of state law have deprived the plaintiff of valuable rights as herein alleged which are guaranteed by the Constitution of Colorado, Article II, Sections 3, 6, 7, 10, 13, and 25 and by the First, Second, Fourth, Fifth, 7th, 9th, Thirteenth, and Fourteenth Amendments of the U. S. Constitution without due process of law.

106. All parties herein have been and are

engaged in interstate commerce in matters herein alleged.

107. Aforementioned contract between Hartford and CMS, EXHIBIT A, which has caused the plaintiff damage as herein alleged, was designed to and makes every physician who is a member of or may become a member of CMS substantially financially interested and subject to medical society abuse in every lawsuit of the type involved herein (see Exhibit B) and in suits alleging malpractice of Colorado physicians, and the insidious nature of such is compounded by court rules restricting admission of evidence of insurance in trial and at peril of mistrial order if plaintiffs attempt such.

108. Aforementioned contract and combination between Hartford and CMS was designed to and does obstruct and interfere with justice in courts to citizens of Colorado and of other

States who rightfully institute lawsuits against Colorado physicians insured by Hartford for acts of the types involved herein or suits because of damages due to negligence in medical care by such physicians and in trial of which other Colorado physicians might testify and whose testimony may be critical and essential to the outcome of the case. All Hartford-insured Colorado physicians are financially interested, and any Colorado physician and any person employed in the medical profession can be expected to be harassed by the financially interested CMS and its members, as witnesses and the plaintiff herein have been, and in other ways within the power of such persons and the CMS which extends to other states, if the physician is the plaintiff as in cases herein involved, or if a physician or any other person employed in the medical profession is

expected to testify or does testify favorably for the plaintiff. Justice in courts have been thus interfered with in countless cases and including trial of this instant lawsuit and related lawsuits.

109. Aforementionod contract and combination tends to limit competition and tends to create a monopoly in the type of insurance to which it pertains which involves interstate commerce, and it tends to create a monopoly and to limit the practice of medicine in Colorado to those who belong to CMS which involves interstate commerce, and such combination is in these and otherways aforementioned inimical to proper public interest in interstate commerce.

110. Aforementioned contract and conspiracy, which has damaged the plaintiff as herein alleged, is an unlawful restraint of interstate commerce and the plaintiff is entitled to treble damages and other relief in accord with

Title 15 § 15 of the United States Code.

111. Aforementioned acts of the defendants and each of them have been committed and continue to be committed maliciously, willfully and wantonly, and in reckless disregard of the rights and feelings of the plaintiff, and the plaintiff is entitled to exemplary damages.

112. As a proximate result of the foregoing combination and conspiracy, truthful evidence and freedom of speech is suppressed and the plaintiff's case in this instant lawsuit is irreparably damaged.

113. As a proximate result of the foregoing combination and conspiracy, the defendants and each of them proximately irreparably damaged the plaintiff's prosecution of other cases, including 80-F-1305 pending in this Court, 77CV0782 District Court for Jefferson County, Colorado, 26884, 28056, and 28036 District Court for Adams County, Colorado,

and they proximately caused his loss of 26884 and 28056, and they proximately caused decrease in the jury verdict in 28036 (EXHIBIT I.) and they proximately caused suppression of evidence and proximately caused enforceable judgment to not be entered on the jury verdict in 28036 in the amount of $730,000.00 all to the irreparable damage of the plaintiff and in his profession.

114. As a proximate result of the foregoing, the plaintiff has been wrongfully deprived of the use of payment for damages to which he is rightfully entitled and interest thereon.

115. The defendants herein have committed the foregoing acts intentionally and with knowledge that the plaintiff's only possible remedy would be through lawsuits and they are for that and other reasons responsible and liable for all expenses and damages resulting therefrom.

116. Aforementioned acts of the defendants

and each of them have proximately caused and continue to cause the plaintiff humiliation, anxieties, mental suffering and severe emotional distress in an amount in excess of ten million dollars in value ($10,000,000.00).

117. Aforementioned acts of the defendants and each of them have proximately caused special damages related in paragraphs 112, 113, 114, 115, and they proximately caused and continue to cause the plaintiff loss of earnings, loss of value of his established medical practice, loss of time, loss of earning capacity, loss of professional opportunities, loss due to replacement costs of an office building and land forced to be sold, expenses and time expended seeking employment elsewhere, storage and moving expenses, court costs, attorneys fees and other expenses of lawsuits and trials, damage to his professional and personal reputations, and other special damage

damage in excess of five million dollars ($5,000,000.00). Such special damages are continuing and the plaintiff requests permission to insert the amount herein and in the prayer for relief when it is finally determined in amount.

SECOND CLAIM FOR RELIEF: OUTRAGEOUS CONDUCT WHICH INTENTIONALLY INFLICTED AND CAUSED THE PLAINTIFF TO SUSTAIN AND SUFFER SEVERE EMOTIONAL DISTRESS

118. Paragraphs 1 through 117 are incorporated herein by this reference.

119. The aforementioned conduct and acts, and each of them, of the defendants jointly and each of them were committed intentionally for the purpose of causing the plaintiff to suffer severe emotional distress.

120. The aforementioned conduct and acts proximately caused and continue to cause the

plaintiff to suffer severe emotional distress and other damage as alleged herein.

WHEREFORE, the plaintiff prays for relief from the defendants herein and judgment jointly and severally as follows:

1. Special damages;

2. General damages in amount of ten million dollars ($10,000,000.00);

3. Treble damages;

4. Costs of suit;

5. Attorneys fees;

6. Interest from the earliest time in accord with Colorado statutes applicable to the judgment;

AND exemplary damages from each of the defendants severally as follows:

7. $10,000,000.00 from Hartford Fire Insurance Company;

8. $10,000,000.00 from Colorado Medical Society;

9. $5,000,000.00 from St. Paul Insurance Companies;

10. $1,000,000.00 from Warren & Sommer, Inc.;

11. $1,000,000.00 from Brighton Community Hospital Association;

12. $1,000,000.00 from Galen Marks, M.D.;

13. $1,000,000.00 from Robert Larsen, M.D.;

14. $1,000,000.00 from Grant Miller, M.D.;

15. $1,000,000.00 from Herbert Rothenberg, M.D.;

16. $1,000,000.00 from James Henderson, M.D.;

17. $1,000,000.00 from Wilfred Stedman, M.D.;

18. $1,000,000.00 from Joseph H. Poynter, M.D.

19. $1,000,000.00 from Carl McLauthlin, M.D.;

20. $1,000,000.00 from John Mott;

22. $1,000,000.00 from Peter Pryor;

23. $1,000,000.00 from William Buckman;

24. $1,000,000.00 from Thomas Mitchell;

25. $100,000.00 from Institute for Corrective

Practice;

26. $ 20,000.00 from Gwen St ieber;

27. $20,000.00 from Jean Koehly;

28. $20,000.00 from Bernadene Post;

29. $20,000.00 from Charlotte Pelletier;

30. $20,000.00 from Terry Fields;

31. $5,000,00 from Richard Evans

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES HEREIN

Address of plaintiff:

1092 S.W. 2nd Ave

Ontario, Oregon 97914

By (signed) D.E.Tyler
Donald E. Tyler
(Admitted to practice before this court)

Attorney for plaintiff, pro se

1092 S.W. 2nd Ave

Ontario, Oregon 97914

telephone (503)-889-5109

VERIFICATION OF COMPLAINT

I, Donald E. Tyler, being duly sworn do hereby state under oath that the allegations in the foregoing complaint are true to my knowledge and belief.

(signed) Donald E. Tyler

Donald E. Tyler, affiant

The foregoing was subscribed to and sworn to before me by Donald E. Tyler in Ontario, Malheur County, Oregon on June 5, 1981

(signed) Grace Hammon

NOTARY PUBLIC

My commission expires:

March 31, 1984

(SEAL)

COLORADO MEDICAL SOCIETY

MASTER CONTRACT

No. 659904

HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut 06115

(A stock insurance company, herein called the Company) Hereby Mutually Agrees With The Colorado Medical Society (Herein called Society) as follows:

(This exhibit is not reproduced here because of bulk and expense in reproduction . It consists of 20 typewritten pages, 8 1/2 by 11 inches in size. It is requested that petitioner be allowed to reproduce it later if its contents are in dispute.)

EXHIBIT A

COMPLAINT OF Civil Action 28036, District Court in and for the County of Weld, removed to District Court in and for the County of Adams

(The body of this complaint consists of 30 legal size pages. It is not reproduced here because of size and expense. If its contents become in dispute or become determinative of issues of this petition, petitioner requests permission for later reproduction. Its Exhibits C, D, and F follow labeled in parantheses.)

EXHIBIT B

BRIGHTON COMMUNITY HOSPITAL

1850 EGBERT STREET, BRIGHTON,

COLORADO 80601

PHONE 659-1531 AREA CODE 303

September 26, 1974

Donald Tyler, M.D.

1790 Bridge Street

Brighton, Colorado 80601

Dear Dr. Tyler:

A request for corrective action concerning your Emergency Room care and conduct has been received by the Executive Committee. In accordance with the By-Laws of the Brighton Community Hospital Medical Staff, the Executive Committee requests your attendance with the Executive Committee at 12 o'clock noon on October 17, 1974 at the Brighton Community Hospital.

A-147

Yours truly,

(signed) Galen D. Marks

Galen Marks, M.D.,

Chairman, Executive

Committee

(EXHIBIT C)

Accredited by the Joint Commission of

Accreditation of Hospitals

BRIGHTON COMMUNITY HOSPITAL

1850 EGBERT STREET, BRIGHTON,

COLORADO 80601

PHONE 659-1531 AREA CODE 303

October 23, 1974

Donald E. Tyler, M.D.

1790 Bridge Street

Brighton Colorado

Dear Dr. Tyler:

Your hearing date has been rescheduled for

Thursday, October 31, 1974, 12:00 noon at

Brighton Community Hospital.

Sincerely,

(signed Galen M. Marks, M.D. by J.K.)

Galen M. Marks, M.D.

Chief of Medical Staff

(EXHIBIT D)

Accredited by the Joint Commission on

accreditation of hospitals

BUSINESS MINUTES Date October 31, 1974

EXECUTIVE STAFF MEETING

Minutes of the meeting of the Executive Staff The meeting was held in the Conference Room at the Brighton Community Hospitals at 12:00 noon, 1974, October 31st.

ATTENDING MEETING: Dr. Galen Marks, President

Dr. Robert Larsen, Vice President

Dr. Bill Waddell, Secretary

Mr. Orrel Daniels, Hospital Legal Counsel

John Vowell, Hospital Administrator

The meeting was called to order at 12:00 noon. The purpose of the meeting as called by the President of the Staff was in accordance with the Medical Staff By-Laws provisions covering hearings. The hearing to be conducted was that of Dr. Don Tyler. Dr. Tyler had been notified by certified

mail of the time and place of the hearing.

1:45 P.M. Dr. Tyler had not appeared at the meeting. The meeting adjourned. No action taken.

(signed) John Vowell

John Vowell, Administrator

(EXHIBIT F)

gaylor's FOOD STORE, INC.

540 Bridge Street . Brighton, Colo

July 3, 1974

Dr. Galen Marks

Chief of Staff

Brighton Community Hospital

Dear Galen:

On Thursday June 27th, 1974 at approximately 5:30 PM I brought my Aunt Miss Margaret Schroer to Brighton Community Hospital for emergency treatment. She received a bad cut on her leg from a lawn mower accident which needed medical attention. The action taken by Dr. Tyler who was on duty was very distressing to me, my family and friends. After discussion with Dale Alter I am writing this letter to the Board and Chief of Staff asking that the situation be reviewed and corrected.

EXHIBIT C A-152

The decision by Dr. Tyler was that my Aunt Miss Schroer should seek medical attention elsewhere because she was not and probably would not be a patient of his. The whole discussion and situation was very unprofessional and is not in my opinion the reason for which Brighton Community Hospital was built. It is my feeling that the Hospital was built to serve all citizens of the Brighton area and in particular admister emergency treatment to anyone regardless of who they are and regardless of who there Doctor is.

This type of situation can only hurt the Image of Brighton Community Hospital and I support action to correct what I feel is the wrong approach in dealing with people who need attention and the service of Brighton Community Hospital.

Sincerely,

(signed) Donald B. Gaylor

Donald G. Gaylor

November 1, 1976

D. E. Tyler, M. D.

1790 Bridge Street PERSONAL AND

Brighton, Colorado CONFIDENTIAL

Dear Dr. Tyler:

The Risk Management Committee of the State Medical Society has been made aware of the suits which you have pending against members of the Staff and Board of the Brighton Community Hospital. It is furthermore aware of a letter written by the husband of a patient that you contacted in Brighton Community Hospital Emergency Room which apparently was one of the instigating factors in your suit against this gentleman. This information is hearsay only.

The Risk Management Committee of the

EXHIBIT D

Colorado Medical Society exists for the purpose of investigating areas where there is potentially an increased risk of malpractice cases against physicians insured by the Colorado Medical Society-Hartford program. Since, after reviewing some 600 claims in this state over five and one half years, the Risk Management Committee is aware that the angry patient is the one most likely to sue, the Committee is requesting your written permission to examine a random sample of hospital records at the Brighton Community Hospital in which you were the primary physician. It is our understanding that you have practiced very little, if any, at that hospital in recent months or perhaps the last year or two and consequently the permission would have to include a review of the cases when you were more active there. The reason for this review is to assure the

Committee that the quality of these records is sufficient for defense, if a case were brought against you (with or without merit).

For your information House Bill 91 passed by the last session of the Colorado Legislature and signed into law effective July 1, 1976, gives permission to committees such as the Risk Management Committee to request such permission in writing. If you wish, a copy of this bill may be obtained from the headquarters of the Colorado Medical Society. The Risk Management Committee would request such permission in writing no later than 30 days after receipt of this letter.

Sincerely,

(signed) Robert S. Brittain, M.D.

ROBERT S. BRITTAIN, M.D.

Chairman, Risk Management Committee

CMS

COLORA DO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218-Phone (303)534-8580

Donald E. Tyler, M.D.

1790 Bridge Street

Brighton, Colorado

PERSONAL AND CONFIDENTIAL

January 12, 1977

Dear Dr. Tyler:

As you were advised by my letter of November 1, 1976 the Risk Management Committee of the Colorado Medical Society requests permission to examine hospital records of yours at Brighton Community Ho spital over the past three years. This request is specifically in reference to emergency room patients.

You should be advised that failure to cooperate with the Risk Management Committee of the Colorado Medical Society would require that that Committee so inform

EXHIBIT E

the Hartford Insurance Company, your carrier.

The Committee expects written permission to examine the above mentioned records to be received by a representative of that Committee at 3501 South Corona Street #7, Englewood, Colorado 80110 no later than January 31, 1977.

Very sincerely yours,

(signed) Robert S. Brittain M.D.

ROBERT S. BRITTAIN, M.D.

MEMBER

Risk Management Committee

(signed) Wilfred Stedman, M.D.

WILFRED STEDMAN,, M.D.

Chairman

Risk Management Committee

WARREN & SOMMER INCORPORATED

SUITE 500/3855 EAST EXPOSITION

DENVER, COLORADO 80209

TELEPHONE 303-744-3711

March 29, 1977

Donald E. Tyler, M.D.

1790 E. Bridge Street

Brighton, Colorado 80601

Dear Dr. Tyler:

On November 1, 1976, the Risk Management Committee of the Colorado Medical Society requested permission to look at your medical records. On November 28, 1976, Dr. Robert S. Brittain received a supoena from you requesting a deposition from your attorney. This deposition was carried out on January 4, 1977 and, following that deposition, Dr. Brittain advised your attorney that the Risk Management Committee would still want

permission to examine your ER records.

As of March 28, 1977, the Risk Management Committee has not received your permission to review your records. I would like to point out that the Risk Management Committee has reviewed (with the doctor's permission) many doctors records in Colorado.

Your professional Liability coverage is due for renewal on December 11, 1977, and this is to advise you we will be unable to offer renewal of the Professional Liability coverage because of your failure to cooperate with the Risk Management Committee of the Colorado Medical Society.

Should you have any questions, please do not hesitate to give me a call.

Sincerely,

(signed) Bill Buck---

William M. Buckman

Vice President

WMB/jg

cc: Wilfred Stedman, M.D.
Robert S. Brittain, M.D.
Thomal Mitchell, Hartford

ONE OF THE SEVENTY WORLDWIDE

OFFICES OF ASSUREX INTERNATIONAL

INSURANCE BROKERS

Denver Regional Office

820 Grant Street THE HARTFORD

Denver, Colorado 80203

Telephone:(303)837-1515

April 26, 1977

Donald E. Tyler, M.D.

1790 East Bridge Street

Brighton, Colorado

Dear Dr. Tyler:

The underwriting department of Hartford has been kept abreast of the on-going efforts of the Risk Management Committee of the Colorado Medical Society to inspect your emergency room records at Brighton Community Hospital. We understand numerous requests have been made to inspect records whether you are keeping adequate emergency room records.

Hartford works in close cooperation with

EXHIBIT G

the Risk Management Committee and, among other things, uses records and information concerning medical records for premium computation.

One of the conditions of your policy with the Hartford, Condition 1 on page 4 of the General Policy Provisions section provides the insured "... shall send copies of such records to the company ... at such times during the policy, as the company may direct." We feel compliance with this policy condition is a condition precedent to any duty on Hartford's part to continue coverage beyond your renewal date on December 11, 1977, and hereby formally demands the opportunity to review your emergency room records at Brighton Community Hospital for the past three years.

I also want to advise you that Hartford's

contract with the Colorado Medical Society provides the company may refuse to renew a physician in the event he or she fails to cooperate with the Risk Management Committee. Please reconsider your position relative to the examination of your records as a continued refusal to provide these records to the Hartford may well lead to a decision not to renew your coverage come December 11, 1977.

Please call me if you have any questions.

Yours very truly,

(signed) Thomas H. Mitchell

Thomas H. Mitchell

Underwriter

Casualty Department

TM:gn

WARREN & SOMMER INCORPORATED

SUITE 500/3955 East Exposition

DENVER, COLORADO 80209

Telephone 303-744-3711

April 26, 1977

Donald E. Tyler, M.D.

1790 Bridge Street

Brighton, Colorado

Re: Donald E. Tyler vs Gaylor, et al

Dear Dr. Tyler:

You may recall I wrote you on behalf of the Hartford Insurance Company on March 29, 1977, concerning problems encountered by the Risk Management Committee of the Colorado Medical Society in its attempt to review your emergency room records at Brighton Community Hospital. You were then advised Hartford would be unable to renew your policy on December 11, 1977, your annual renewal date. The notice of

non-renewal was based solely on your refusal to permit the Committee to review your emergency room records. The purpose for that request was to determine whether medical care rendered by you was being adequately documented in the event you were to be sued.

Dr. Brittain of the Risk Management Committee has recently advised Hartford the Committee wishes to give you the opportunity to discuss this matter with the Committee before it makes any final recommendations concerning non-renewal. I've also been advised a representative of the Committee has written you in this regard.

Accordingly, Hartford plans to reserve its decision on non-renewal until you meet with the Committee and the Committee has

made further recommendations.

Without waiver of any rights under the policy, and more specifically, the right to contend your refusal to cooperate with the Committee is proper grounds for non-renewal, Hartford is for the time being withdrawing the notice of non-renewal as set forth in my letter of March 29, 1977.

I'm sure you understand the request to examine your records is not personal and was not and is not intended to be a reflection on the way you practice medicine. Similar requests have been directed to numerous doctors in an effort to evaluate the manner in which records are kept and to assist and educate these physicians. I urge you to cooperate with Hartford and the Committee in permitting review of your records.

Sincerely,

(signed) Bill Buckm---

William M. Buckman

Vice President

WMB/jg

cc: Wilfred Stedman, M.D.

Herbert J. Rothenberg, M.D.

James A. Henderson, M.D.

Robert S. Brittain, M.D.

CMS

COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218-Phone (303) 534-8580

April 26, 1977

PERSONAL AND CONFIDENTIAL

Donald E. Tyler, M.D.

1790 East Bridge Street

Brighton, Colorado

Dear Dr. Tyler:

I have written you on two separate occasions, on November 1, 1976, and on January 12, 1977, requesting on behalf of the Risk Management Committee of the Colorado Medical Society, permission to examine your hospital records at Brighton Community Hospital over the past three years. That request to examine records, outstanding since November 1, 1976, was also verbally communicated to you at the time of my

deposition on January 4, 1977, and thereafter to your former attorney, Mr. Mitchem.

Because of your failure to cooperate with the Risk Managemnt Committee, the Committee recommended that Hartford refuse to renew your professional liability coverage.

Although the Committee's recommendation is that your coverage not be renewed on the annual renewal date, we want to give you the chance to discuss this matter with the Committee. We want to discuss this matter with you personally before making any final recommendation to Hartford concerning non-renewal.

The Committee has now asked that Hartford reserve any final decision whether to renew your policy until we've had a chance to discuss this matter with you and make further recommendations.

Would you be kind enough to give me a call and let me know whether you would be willing to meet with the Committee to discuss this matter?

Our next committee meeting is set for Monday, May 9, 1977, at 8:30 P.M. at Colorado Medical Society, 1601 East 19th Avenue, Denver, Colorado. If you don't contact me, please consider this letter as a formal request that you meet with the Committee on May 9, 1977, to discuss the matters of your cooperation with the Committee and the Committee's recommendation concerning non-renewal of coverage. If you fail to attend the meeting, the Committee will make a final recommendation against renewal of coverage on that date. In that event you will again be notified of our recommendation against renewal and will have 30 days from your receipt of

notification of non-renewal to appeal this decision to the Board of Trustees of the Colorado Medical Society.

Very sincerely yours,

(signed) Robert S. Britt--- MD

Robert S. Brittain, M.D.

Member

Risk Management Committee

RSB/mhs

CMS
COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218. Phone (303)534-8580

August 23, 1977

Donald Tyler, M. D.

1790 East Bridge St.

Brighton, CO 80601

(CERTIFIED MAIL)

Dear Dr. Tyler:

The Risk Management Committee of the Colorado Medical Society has received information from past Emergency Room records that your hospital records may be deficient in documentation of history, physical, and patient instruction. The Committee is requesting permission for a physician selected by them to inspect your records at whatever hospital you have used

EXHIBIT J

to see Emergency patients in the past two years and to report back to the Risk Management Committee. Would you please complete the enclosed form and return it to me.

For your information, 13-90-107, C.R.S. 1973, as amended allows committees such as the Risk Management Committee of the Colorado Medical Society to examine records of patients if the physician gives such permission. Permission of the patient is not required. If you have any questions, I can be reached at 442-4660.

Very sincerely,

(signed) J.H. Poynter

Joseph H. Poynter, M.D.

Chairman, Risk Management Committee

JHP:pjc

CMS

COLORADO MEDICAL SOCIETY

1601 East 19th Avenue

Denver, Colorado 80218. Phone(303)534-8580

TO: Chairman, Risk Management Committee

Colorado Medical Society

(Certified Mail)

I, Donald Tyler, M.D., do hereby authorize a representative of the Risk Management Committee of the Colorado Medical Society to examine my medical records at whatever hospitals I have used to see Emergency patients in the past 2 years and to report those findings back to the Risk Management Committee. I understand that 13-90-107, C.R.S. 1973, as amended, allows committees such as the Risk Management Committee of the Colorado Medical Society to examine records of patients if the physician gives

such permission. Permission of the patient is not required.

(unsigned)
(Signature) Donald E. Tyler, M.D.

(undated)
(date)

DONALD E. TYLER, M.D.

UROLOGIST

1790 East Bridge Steeet

Brighton, Colorado 80601

Telephone 659-4581

September 9, 1977

Joseph H. Poynter, M.D.

Chairman, Risk Management Committee

2750 Broadway

Boulder, Colorado

Dear Doctor Poynter:

I have received the request of you and those you represent to examine the records of my patients. You have stated that my records may be deficient.

I request the following information:

1. Who reported information concerning records of my patients to the Risk Management Committee?

2. Who reported information concerning

records of my patients to you?

3. When was each of those reports made?

4. Where were each of those reports made?

5. What were the contents of each of such reports?

6. What patients' records are considered to possibly be deficient?

7. Who (names please) determined that they may be deficient?

8. In what respects are each of such records considered to possibly be deficient?

9. Have you examined any records of my patients? If so, please identify which records you examined with exactness, and who supplied them to you, when and where.

10. Has the committee examined any records of my patients? If so, please identify exactly which records were examined and who supplied them, and when and where they were supplied.

11. By whose permission were each of such records examined?

12. What is the purpose of your request? Of course, you are aware that the Risk Management Committee has already made a recommendation that my professional liability insurance not be renewed and this has been acted upon. What do you intend now? You are undoubtedly aware that matters with which you are involving yourself are properly before two courts of law.

My patients expect me to not reveal confidences. It is against my ethics to not cause a breach of that expectation and I respect and observe the same ethics concerning patients of other physicians. It is recognized, and by your letter, that those may not be the same as your ethics or those

of the organizations which sponsored the legislation you cited.

I hope you will cooperate and supply me with the above information so that I might have some idea of your interest.

I do not know of any patients whom I have seen as emergencies in any hospital Emergency Room in the past two years. I sincerely request that you reconsider your involvement in this matter.

Yours truly,

(signed) D.E. Tyler

Donald E. Tyler, M.D., J.D., FCLM

cc:

Robert Brittain, M.D.

Herbert Rothenberg, M.D.

James Henderson, M.D.

Wilfred Stedman, M.D.

Carl McLauthlin, M.D.

VERDICT FOR PLAINTIFF

STATE OF COLORADO,)
) ss.
County of ADAMS,)

IN THE DISTRICT COURT WITHIN

AND FOR SAID COUNTY

DONALD E. TYLER, Plaintiff)
)
vs.) VERDICT
)
GALEN MARKS, ROBERT LARSEN,)
JOHN VOWELL, and BRIGHTON)
COMMUNITY HOSPITAL)
ASSOCIATION, Defendants)

We, the Jury find the issues herein joined for the Plaintiff Donald E. Tyler and assess his actual damages at the sum of $682,000.00 dollars ($682,000.00), assessing $170,500.00 against Defendant Marks, $170,500.00 against Defendant Larsen, $136,400 against Defendant Vowell,

$204,600.00 against Defendant Brighton Comm. Hospital. We assess his exemplary

damages at the sum of 48,000 dollars ($48,000.00), assessing $12,000.00 against Defendant Marks, $12,000.00 against Defendant Larsen, $12,000.00 against Defendant Vowell, $12,000.00 against Defendant Brighton Comm. Hospital.

(signed) A. A. Ellis
Foreman

QUESTIONS TO BE ANSWERED BY THE JURY

The Court instructs you to answer each of the following questions. Please answer each question yes or no.

1. Did Plaintiff suffer damage (actual or nominal) based upon breach of contract related to the corrective action procedure provided in the by laws? (Yes or No) YES

2. If question number 1 is answered "Yes," is Defendant Marks liable for such damages ? (Yes or No) YES

3. If question number 1 is answered "Yes," is Defendant Larsen liable for such damages? (Yes or No) YES

4. Did Plaintiff suffer damage based upon a conspiracy which caused his name to be omitted from the emergency room call list? (Yes or No) YES

5. If question number 4 is answered "Yes," is

Defendant Marks liable for such damages?

(Yes or No) YES

6. If question number 4 is answered "Yes," is Defendant Larsen liable for such damages?

(Yes or No) YES

7. If question number 4 is answered "Yes," is Defendant Vowell liable for such damages?

(Yes or No) YES

8. Did Plaintiff suffer damages based upon improper denial or reappointment to the medical staff? (Yes or No) YES

9. If question number 8 is answered "Yes," is Defendant Marks liable for such damages?

(Yes or No) YES

10. If question number 8 is answered "Yes," is Defendant Larsen liable for such damages?

(Yes or No) YES

11. If question number 8 is answered "Yes," is Defendant Vowell liable for such damages?

(Yes or No) YES

12. Did Plaintiff suffer damages based upon wrongful interference with his medical practice by any defendant? (Yes or No) YES

13. If question number 12 is answered "Yes," is Defendant Marks liable for such damages? (Yes or No) YES

14. If question number 12 is answered "Yes," is Defendant Larsen liable for such damages? (Yes or No) YES

15. If question number 12 is answered "Yes," is Defendant Vowell liable for such damages? (Yes or No) YES

16. If question number 12 is answered "Yes," is Defendant Brighton Community Hospital Association liable for such damages? (Yes or No) YES

17. Did Plaintiff suffer damages based upon Brighton Community Hospital Association ratifying any of the following alleged acts of

defendant's:

a. A conspiracy which caused Plaintiff's name to be omitted fro. the emergency room call list? (Yes or No) YES

b. Improper denial of the reappointment of Plaintiff to the medical staff? (Yes or No) YES

c. Intentional interference with Plaintiff's medical practice? (Yes or No) YES

18. Did plaintiff suffer damage based upon Defendant Marks abusing his privilege, by acting in bad faith, in connection with the writing of the letter of September 26, 1974? (Yes or No) YES

19. Did Defendant Vowell defame Plaintiff on December 29, 1974? (Yes or No) NO

(signed) A. A. Ellis
Foreman

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

DONALD E. TYLER,	)
	)
Plaintiff,	) Civil Action
	)
vs.	) No. 81-F-1287
	)
HARTFORD FIRE INSURANCE	) JUDGMENT
	)
COMPANY, COLORADO	)
	)
MEDICAL SOCIETY, et. al.,	)
	)
Defendants	)

PURSUANT to and in accordance with the Order of Dismissal with Prejudice and Judgment for Defendants entered by the Honorable Sherman G. Finesilver, District Judge, on May 25, 1982, bench ruling of April 21, 1982, incorporated herein by reference it is

ORDERED that judgment enter pursuant to said Order, which is incorporated herein by reference. It is

FURTHER ORDERED that costs are to be borne by the respective parties.

DATED at Denver, Colorado this 25th day of May, 1982.

FOR THE COURT:

(signed) James R. Manspeaker

JAMES R. MANSPEAKER, CLERK

ENTERED ON THE DOCKET MAY 25, 1982

JAMES R. MANSPEAKER

CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-2187

DONALD E. TYLER,	)	
	)	ORDER OF
Plaintiff,	)	
	)	DISMISSAL WITH
vs.	)	
	)	PREJUDICE AND
HARTFORD FIRE	)	
	)	JUDGMENT FOR
INSURANCE CO., et al.,	)	
	)	DEFENDANTS
Defendants.	)	

This matter came before the Court for hearing on numerous pending motions which have been filed by the defendants. These motions include a Motion for Entry of Judgment filed on March 18, 1982 by defendants Hartford Fire Insurance Company, Colorado Medical Society, Institute for Corrective Practice, Herbert Rothenberg, M.D., Wilfred Stedman, M.D., James A. Henderson, M.D., Joseph H. Poynter, M.D., Carl McLaughlin, M.D., Galen Marks, M.D.

Robert Larsen, M.D., Thomas H. Mitchell and Grant Miller, M.D.; a Motion for Entry of Judgment filed on March 22, 1982, by defendants Warren & Sommer, Inc. and William Buckman; a Motion for Entry of Judgment filed on March 23, 1982, by defendant Peter Pryor; a Joinder in Motion for Entry of Judgment filed March 24, 192, by defendant St. Paul Insurance Companies; a Motion for Entry of Judgemnt filed on March 25, 1982, by defendants Richard Evans and Terry Fields; and a Joinder in Motion for Entry of Judgment filed on April 2, 1982, by defendant John Mott and a Joinder in Motion for Entry of Judgment filed on April 2, 1982, by defendants Brighton Community Hospital Association, Charlotte Pelletier, Jean Koehly, Bernadene Post and Gwen Stieber.

This case was initiated on July 22, 1981, when plaintiff filed his complaint. Although

the plaintiff appeared pro se throughout this litigation, he is an attorney at law who has been admitted to practice before this Court since October 4, 1968.

The Complaint named 24 individual and corporate defendants and set forth a myriad of charges which appeared to stem from cancellation of plaintiff's malpractice insurance, the circumstances surrounding his termination from Brighton Community Hospital and the conduct of other litigation which plaintiff has from time to tme initiated.[1, 1a] It sought compensatory and

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1. In addition to this case, this Court has had pending before it three other cases brought by Mr. Tyler: 79-F-864, 80-F-1305 and 81-F-590.

1a. (This footnote by petitioner). None of the mentioned cases are in evidence. Previously the Court specifically did not take judicial notice of other lawsuits. No relevance of the noted cases has been presented. There has been no hearing concerning the noted cases. 79-F-864 was brought against

Hartford and a lawyer it employed to defend Tyler, its insured, against a malpractice suit Hartford and others caused to be brought in collusion against Tyler. (That is the type of thing they were interested in doing in trying to examine all medical records of Tylers' patients, in addition to reasons alleged herein.) The case was obviously without merit. The lawyer was not properly working to defend the case, but was deceitfully working to defeat Tyler. Tyler dismissed the case prior to responsive pleading after the lawyer withdrew as counsel. Subsequently, at Tyler's insistence, the case against Tyler was settled for a nominal amount. Tyler subpoenaed the person who brought that lawsuit and his attorney to take their depositions in a related case before this Court (Petition No. 81-2139). That discovery was refused, and as a result of an exparte hearing between the court and Hartford's counsel at that time for protective orders, all discovery was stayed. Conclusions are obvious, and that conclusion is not that Tyler did not have a case.

80-F-1305 and 81-F-590 involved cases in which counsel for Brighton Community Hospital was involved and was defendant in one. He settled them for $100,000 for damages not included in this or any other lawsuit except for a nominal amount. The bond ordered herein might be related, but its relevance has not been shown. It may be related psychologically in the way shown in Hemingway's famous Old Man and the Sea.

punitive damages in excess of 15 million dollars on a wide range of claims including antitrust, civil rights, contract, conspiracy and numerous torts.

The Complaint was extemely lengthy and difficult to understand. It made repeated allegations of a long series of wrongful acts, but it was impossible to determine what the specific acts were, what the precise claims were or what claims were made against whom.

It also contained numerous allegations which were in many respects identical to those brought by Mr. Tyler in other cases wherin final judgments have been rendered against him. [2, 2a]

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2. Tyler v. The Hartford Insurance Group, Francis Fry and Robert S. Brittain, Colorado Court of Appeals No. 81 CA 0157 (1981)

2a. (This footnote by petitioner). The case aforementioned is not in evidence. The Court previously refused to take judicial notice. (Page A-66). The case is before this Supreme

It also contained numerous allegations charging various libels and slanders by several defendants which occurred in 1976 and 1977, and for which any action would be barred by the operation of Colorado's one year statute of limitations, C.R.S. 1973 § 13-80-102.

Jurisdiction was alleged to be founded upon both diversity and the existence of a federal question.

Each of the defendants filed motions attacking the sufficiency of the Complaint and several defendants also requested the Court to exercise its discretion and order plaintiff to post a cost bond.

After spending a considerable period of

Court as petition for writ of certiorari, No. 81-2139. The relevance of allegations being similar against those defendants has not been shown. It appears to be a compounding of "errors." The Court admits understanding the allegations to this extent, at least.

time to comprehend the Complaint, the Court ruled on the pending motions on February 17, 1982. In its ruling the Court dismissed certain claims or allegations including those dealing with the alleged 1976 and 1977 libels and slanders. Pursuant to Rule 8(e)(1) of the Federal Rules of Civil Procedure, the Court also granted fefendants' Motion to Strike the Complaint. The Court did, however, give the plaintiff an opportunity to replead. Specifically, it gave the plaintiff until March 17, 1982, to file a simple, concise and intelligible amended complaint which would correct the numerous deficiencies found in the original, and encouraged plaintiff to retain counsel to assist him in pursuing these matters.

Pursuant to its residual discretionary powers stemming from Rule 83 of the Federal Rules of Civil Procedure and, because of the existence of numerous state claims which

made C.R.S. 1973 § 13-16-102 applicable, the Court also ordered plaintiff to post a cost bond in the amount of $2,000.00 per defendant.

The Court ordered this bond because the plaintiff, by his own allegations, admitted to being unemployed and a resident of another state. Moreover, in ordering the bond that it did, the Court took into consideration the extremely complex nature of the suit, the numerous claims asserted, the plaintiff's likelihood of success on the merits,[3] the number of defendants and the nature of the claims asserted against each,[4] the probable

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3. (Petitioner's footnote) This is the first time the petitioner's likelihood of success is given as a reason for ordering the bond. Although the reason is paradoxical, petitioner admits that the likelihood of his success in a jury trial would be great. The public would readily find the conduct outrageous and it would be outraged at the condoned conspiracy to obstruct justice.

4. (Petitioner's footnote). Understanding of the claims asserted is admitted by the Court.

the probable length of the discovery process and of the case as a whole, the enormous costs of discovery,[5] and the number, nature and results of the other cases which this Court has handled wherein this same plaintiff initiated similar actions.[6]

Thereafter, plaintiff filed in the Tenth Circuit a Petition for Writ of Mandamus And/or Prohibition. In this Petition plaintiff stated that he was "left with no alternative but to stand on his Complaint, which he does. The requirement of the Court that the petitioner amend his

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5. (Petitioner's footnote). No estimated costs of discovery are in evidence. The production of documents Hartford published concerning the plaintiff should not be costly. That is the logical starting point, which discovery has been denied.

6. (Petitioner's footnote). Refer to footnotes 1a and 2a supra. He has been deprived the right to jury trial on some of his cases, in error and in abuses of discretion. Refer to exhibits of complaint, pages A-182 through A-187, for results of one jury trial subject to petition for writ of certiorari, #81-2007. This is the reason for closure of the courts.

Complaint along the lines demanded is impossible, arbitrary, unreasonable, in abuse of discretion, and in excess of jurisdiction." This Petition was denied on March 18, 1982.

On March 26, 1982, the Court scheduled a hearing on all pending Motions of defendants to be held on April 21, 1982, at 2:00 P.M. Plaintiff moved to continue the hearing date and this motion was denied by Minute Order dated April 8, 1982. In a Response to Motion to Enter Judgment filed by the plaintiff on April 8, 1982, the plaintiff stated that he did not intend to file an amended complaint nor did he intend to post any of the specified cost bonds.

On April 21, 1982, the hearing on defendants' pending motions was held as scheduled. Each defendant was represented by counsel. The plaintiff did not appear but,

instead, had sent counsel for the defendants a document entitled "waiver of Hearing." He had not, however, filed the waiver with the Court.[7] The hearing was held and counsel for defendants requested that any dismissal be with prejudice. (The waiver is Defendants' Ex. A.)

As the Court indicated during its ruling on February 17, 1982, the Complaint herein was virtually unintelligible and did not adequately advise the defendants of the nature of the charges against them nor provide them with

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7. (Petitioner's footnote.) The document referred to (Pages A-45 through A-49, Appendix A), was mailed to the clerk of the court on April 15, 1982, certified mail with return acknowledgement of receipt. The return shows that it was received April 19, 1982. The docket file shows it to have been filed on April 26, 1982. This sort of thing is altogether too common for a society that purports to operate with equal justice under the law. The entire handling of the case is of the same character.

information sufficient to enable them to draft a responsive pleading. Although it struck the complaint, the Court did not dismiss the action. Instead, it gave the plaintiff an opportunity to replead by filing an amended complaint which would meet the standards of F.R.C.P. 8(a). The plaintiff has not elected to take advantage of this opportunity. Accordingly, the Court finds that this action should now be dismissed with prejudice.

In addition, and as a separate and independent grounds for dismissal, the Court also finds that plaintiff has purposely failed to post any of the costs bonds which the Court required.

Two defendants, Officers Evans and Fields, requested attorneys fees, and the Court in its discretion denied these requests with leave to renew the request in the future.

WHEREFORE, it is Ordered that this action be and is hereby dismissed with prejudice, and that judgment enter in favor of each defendant, each party to bear his own costs. The Court's bench ruling of April 21, 1982 is incorporated herein.

DATED at Denver, Colorado, this 25 day of May, 1982.

(signed) Sherman G. Finesilver

Sherman G. Finesilver, Chief Judge
United States District Court

ENTERED ON THE DOCKET MAY 25, 1982

JAMES R. MANSPEAKER
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 81-F-2187

DONALD E. TYLER,	)	
	)	
Plaintiff,	)	NOTICE OF
	)	
vs.	)	APPEAL
	)	
HARTFORD FIRE INSURANCE	)	
	)	82-1650
COMPANY, et al.,	)	
	)	
Defendants	)	

Notice is hereby given that Donald E. Tyler, plaintiff above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment and orders of this Court as follows:

(1) Order issued on April 28, 1982, denying Plaintiff's Motion to Alter or Amend Judgment, and judgment entered pursuant to that order,

(2) Order issued April 21, 1982, dismissing

this action, and with prejudice, and judgment entered pursuant to that order;

(3) Order issued February 17, 1982:

(a) ordering the plaintiff to post or submit a "cost" bond in the amount of $2000.00 per defendant totalling $48,000.00,

(b) denying plaintiff's motion to strike defendants' motions to award them attorney fees,

(c) denying plaintiff's motion to compel discovery,

(d) dismissing paragraphs 40-53, 56-59, 63-68, and 103 of the complaint,

(e) striking paragraphs 55, 60, and 75-79,

(f) striking entire complaint,

(g) ordering plaintiff to separagely state claims against each defendant,

(h) ordering more definite statement,

(i) ordering allegations of time and

place inconsistent with denial of motions

for such;

(4) Order of stay of discovery January 11, 1982.

DATED: May 20, 1982

By (signed) D. E. Tyler

Donald E. Tyler

Attorney for plaintiff, pro se

1092 S.W. 2nd Ave

Ontario, Oregon 97914

telephone (503)-889-5109

Filed United States District Court

May 24, 1982 James R. Manspeaker, Clerk

Filed United States Court of Appeals

Tenth Circuit May 25, 1982

Howard K. Phillips, Clerk

United States Court of Appeals

TENTH CIRCUIT

Office of the Clerk

C404 United States Courthouse

Denver, Colorado 80294

June 25, 1982

Mr. Donald E. Tyler

1092 S.W. 2nd Ave

Ontario, Or 97914

R: No. 82-1650, Tyler vs. Hartford Fire Insurance Co. et al.

Dear Mr. Tyler:

The record on appeal from the United States District Court for the District of Colorado was received and filed June 8, 1982, in the captioned cause.

Sincerely,

HOWARD K. PHILLIPS, Clerk

By: (signed) Theresa Smith

HKP/tas Deputy Clerk

END OF DOCUMENT